

# Public Utilities

*FORTNIGHTLY*

Volume XLVII No. 2



January 18, 1951

## ALL THAT VAPORIZES IS NOT "GAS"

*By Arthur C. Kreutzer*

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## Are Federal Agencies Trying to Block Hydro Development?

*By James J. Kilpatrick*

« »

## A Waiting Audience—We, the People

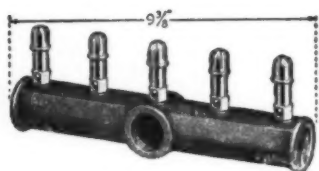
*By James H. Collins*

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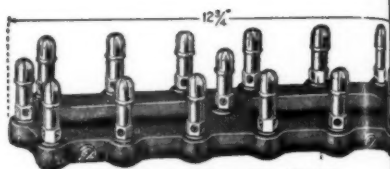
## Steel Output and the Utilities

*By T. N. Sandifer*





Appliance Burner No. L-50. Particularly adapted to any long, narrow combustion chamber. These units may be assembled end-to-end to make a long row of jets, or side-by-side to make a bank of burners. Will give uniform heat distribution.



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# Public Utilities

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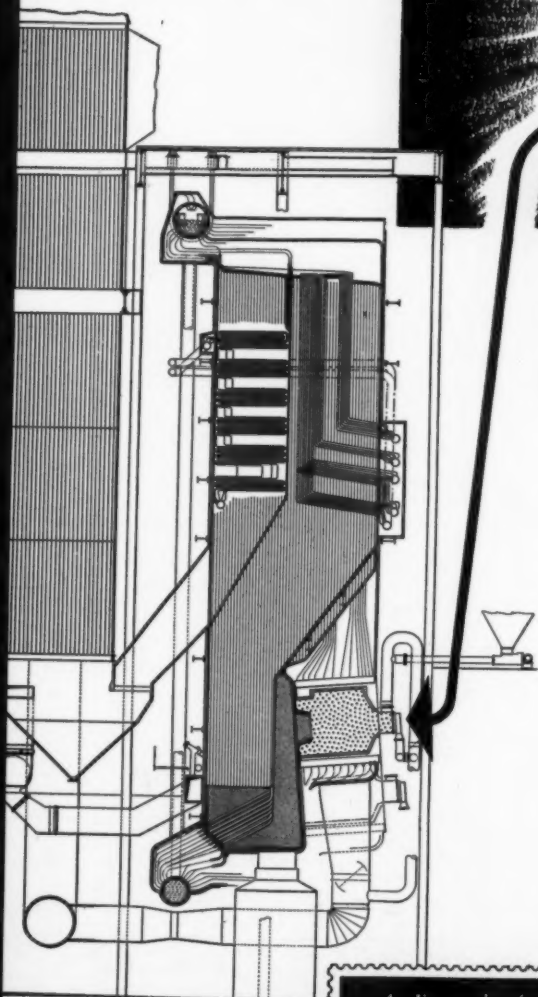
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PUBLIC UTILITIES FORTNIGHTLY... stands for Federal and state regulation of both privately owned and operated utilities and publicly owned and operated utilities, on a fair and nondiscriminatory basis; for nondiscriminatory administration of laws; for equitable and nondiscriminatory taxation; and, in general—for the perpetuation of the free enterprise system. It is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.



# Start here

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through lower cost and maintenance of coal preparation equipment.
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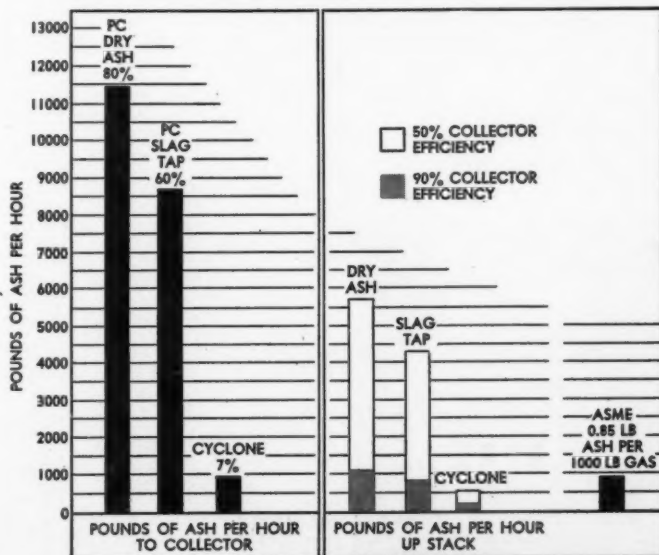
An Example of  
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for Economy



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The logical place to start controlling fly-ash is in the furnace, where it is produced. B&W's unique Cyclone-Furnace recovers extremely high percentages of ash in the form of easy-to-handle slag. Your collectors handle only a small fraction of the dust-loading they would normally receive from pulverized-coal fired boilers, even those of the slag-tap furnace type. This big advantage, illustrated in a typical case study below, is only one of several that account for selection, since 1946, of Cyclone-Furnace Boilers with total steam capacity exceeding 14 million pounds per hour.

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## Pages with the Editors

As these lines were written, President Truman had not yet delivered to the new Congress his annual message on the State of the Union. And so the readers will probably know whether the President did or did not ask for new taxes in that particular message. But it would be mere quibbling to labor the point about the President asking for new taxes in January or thereafter. It seems pretty certain that he is going to ask for them sometime in the near future, and probably early in the opening session of the 82nd Congress.

It seems certain also that Congress will hem and haw a good deal before approving the skyscraping levies on personal incomes, business corporations, and other sources of revenues which must be tapped by the tax collectors. The fact that supplemental appropriations already are running \$12 billion ahead of receipts expected from all tax laws now on the statute books, points to the inevitable. Secretary of the Treasury Snyder has testified that spending for the next fiscal year will go up to about \$75 billion. The yield under present laws will amount to scarcely more than

\$50 billion, leaving some \$25 billion deficit to add to our national debt of \$256 billion.

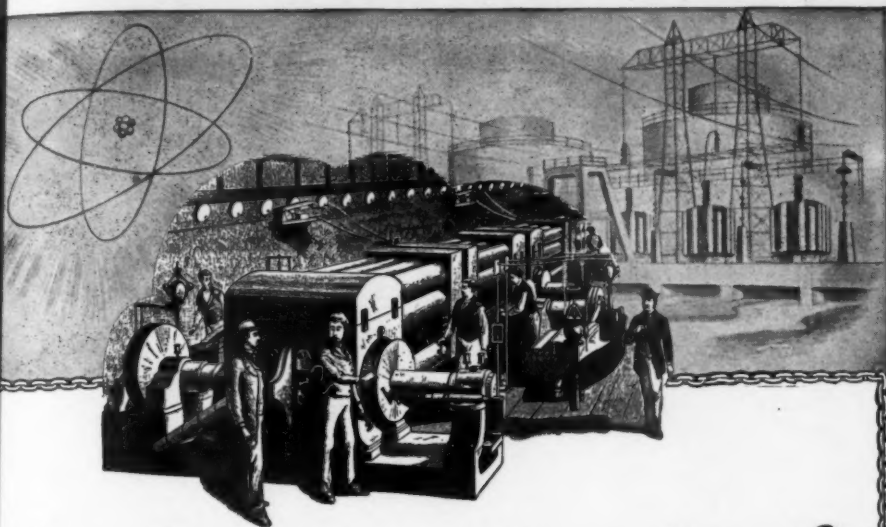
THE interest of public utilities in this tax picture is twofold. From the standpoint of *direct* effect, utilities must expect to bear their fair burden of extra taxes. But it is at least encouraging to note that the 81st Congress recognized the special position of regulated utilities, in working out the tax formula for the retroactive excess profits tax. It is only reasonable to expect that the 82nd Congress will follow this pattern in any new form of taxation of business corporations which may be required by the present defense emergency.

INDIRECTLY, the utilities also have a considerable stake in whether or not Congress imposes taxes required to curb inflationary buying power in the hands of the public. Utilities are especially vulnerable to inflation, because their rates are rigidly controlled, while their operating costs are subject to the rising tide of prices. Taxation which will transfer purchasing power from the public to the government will at least tend to keep a brake on prices.

BUT such a tax policy assumes that the government itself must cut its buying, particularly its nonwar buying, to the very bone so as to ease the pressure on the civilian market. Public utilities which are in a position to handle additional loads for defense work have a right to expect that government spenders will not insist that the taxpayers' money be squandered and precious man power and materials diverted for the construction of unnecessary government facilities. It may be that the 82nd Congress will keep a sharp eye on Federal officials who sometimes appear to be in favor of Federal spending for itself alone — even where planned projects duplicate available facilities of tax-paying business corporations.



ARTHUR C. KREUTZER



## Is your financing program attuned to the times?

● Scientists once marveled at these "Jumbo" dynamos which were installed in the first Edison Electric Lighting Station in New York City. Yet you could scarcely visualize them in the modern plant of today.

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up-to-date approach to the financial community—a comprehensive program fully geared to meet today's changing conditions?

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Public Utilities Department

TOM P. WALKER, *Vice President in Charge*

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WE present in this issue a feature story about a very challenging situation along this line in the state of Virginia. It deals with the alleged refusal of certain Federal agencies to permit (if they can possibly help it) a private power company to invest its own money in the construction of hydroelectric facilities to be used in public service. According to this article, which begins on page 78, this attitude on the part of some Federal officials seems to be carried to such an extreme that they are willing to see no dam built at all (if the government cannot build one) rather than let the power companies go ahead with the job.

JAMES J. KILPATRICK, author of this article, entitled "Are Federal Agencies Trying to Block Hydro Development?" is a native of Oklahoma city and a graduate of the University of Missouri School of Journalism. He became a reporter for *The Richmond News Leader* in 1941. He was made associate editor of that well-known Virginia daily early in 1949, a post which he still holds.

\* \* \* \*

LAST year spokesmen for the liquefied petroleum gas industry caused some stir among their fellow gas men at the American Gas Association convention with the announcement that the LP-gas market potential is 13,000,000 customers in the United States, and that about half of that market is now being served. It would be indeed trite, this late in the day, to say that LP-gas has come of age. The truth of the matter is that LP-gas is in some ways about the fastest growing segment of the gas industry.

BUT is the LP-gas business a public utility? This is a question which is becoming more important with each stride taken by this expanding industry. Last year, when only a handful of the states had legislative sessions, several bills to regulate LP-gas as a public utility were considered, but none passed. This year when 44 state legislatures meet in regular session, there will be undoubtedly an additional flurry of such legislative proposals.

WHAT are the facts, legally, commercially, and economically, about the proper status of LP-gas? Is it simply the sale of a commodity in a container, such as beer, milk, or canned goods? Or does it have public service ramifications which could be made, or should be made, subject to conventional public utility control?



JAMES J. KILPATRICK

ANSWERING the former question affirmatively and the latter question negatively, we have a very interesting article in this issue (beginning page 69) from a very authoritative source. He is ARTHUR C. KREUTZER of Chicago, vice president and counsel of the Liquefied Petroleum Gas Association — the national trade group for the LP industry. Mr. KREUTZER is a graduate of DePaul University ('31) and practiced law in Chicago until 1941 when he served with the U. S. Navy as a Lieutenant Commander during World War II. Following his war service he became counsel and secretary for the Liquefied Petroleum Gas Association in early 1946, taking over the duties of vice president and counsel in June, 1950.

THE next number of this magazine will be out February 1st.

*The Editors*



Courtesy Bettmann Archives

## Getting work done in 1/2 the time

THIS double pen and paper holder was considered quite an ingenious idea back in 1896.

The art of getting things done accurately and faster mechanically, no one will deny, has made tremendous strides in American offices.

Like today's analyses of consumers' bills, for example. More and more utilities all over America are saving valuable time and money by having their bills analyzed on the specially developed electrical device shown below.

Called the Bill Frequency Analyzer—it automatically classifies and adds in 300 registers—one step.

It does analyses in 1/2 the usual time . . . and at approximately 1/2 the cost of having the data compiled in the offices of the utility.

Wouldn't you like to know more about this unusual service which gives you an accurate picture of your consumers' usage situation?

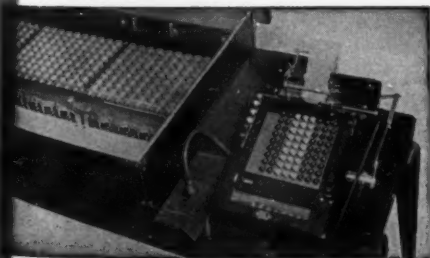
### Send for FREE booklet

"The One Step Method of Bill Analysis" tells more about this accurate and economical method of compiling consumers' usage data. Why not send for it now?

## Recording and Statistical Corporation

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New York 13, N. Y.



# Coming IN THE NEXT ISSUE



## **ZONE FARES FOR PASSENGER TRANSIT. PART I.**

Here is a discussion of transit passenger fare trends which leads to the conclusion that management might well undertake surveys with a view to establishing zone fare systems. Graeme Reid, well-known transit engineer, shows why modern equitable transit fares ought to reflect the length of the ride and the cost of service rendered. Part I deals with the inadequacy of flat rate increases.

## **TODAY'S TOOLS FOR THE BRIDE OF TOMORROW**

At homemaking class, the modern girl student, who will be tomorrow's bride, used to have to work with old appliances. Then, one farsighted California utility decided to team up with manufacturers and dealers in an effort to keep the student supplied with the very latest at no maintenance cost. James H. Collins, author of business articles, tells how this idea got started and what it has done in the way of developing new markets for appliance dealers and manufacturers.

## **PLANNING NOW FOR FUTURE MAN-POWER SHORTAGES**

Operating public utilities are in a doubly vulnerable position during any prolonged man-power shortage because of their rigid cost restrictions and service obligations. Ernest W. Fair, business author, offers a simple, general program of steps which can be drawn now to cope with man-power shortages, as distinguished from later on, when war boom employer recruiting becomes more pronounced.

## **DO WE NEED A NATIONAL RECREATION POLICY?**

Several agencies of the Federal government, concerned with multipurpose development or just flood control, are dealing with the problem of allocating considerable portions of the Federal investment herein to nonreimbursable "recreational benefits." The preliminary efforts for economic justification of such allocation of Federal funds are explored by the author, John J. Hassett, who considers the direction from which these moves will come.



**Also . . .** *Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.*

**THE TRUCKS THAT DO  
THE MOST FOR YOU!**

**Wait till you  
see 'em!**



Watch the  
February issue  
of this magazine  
for the BIG NEWS

# Remarkable Remarks

"There never was in the world two opinions alike."

—MONTAIGNE

HERBERT H. LEHMAN  
*U. S. Senator from New York.*

"The charge of 'Socialism' is most often made by men who pay lip service to 'freedom' but mean only their freedom to exploit others."

WILLIAM RANDOLPH HEARST  
*Publisher.*

"The difference between a politician and a statesman is that a politician is true to his party and a statesman is true to his principles."

HENRY FORD II  
*President, Ford Motor Company.*

"Let's ask government to call the signals, but call them loud and clear and keep us up to date on the score, so we know what is expected of us."

SUMNER H. SLICHTER  
*Professor of economics,  
Harvard University.*

"The prospective rise in prices indicates that the country is confronted with the problem of keeping the inequities of inflation to a minimum."

MARK SULLIVAN  
*Columnist.*

"Creation of public confidence, and the strengthening thereby of the national spirit, is a necessity practically as great as the necessity for maximum armed strength."

LEON KEYSERLING  
*Chairman, Council of Economic  
Advisers.*

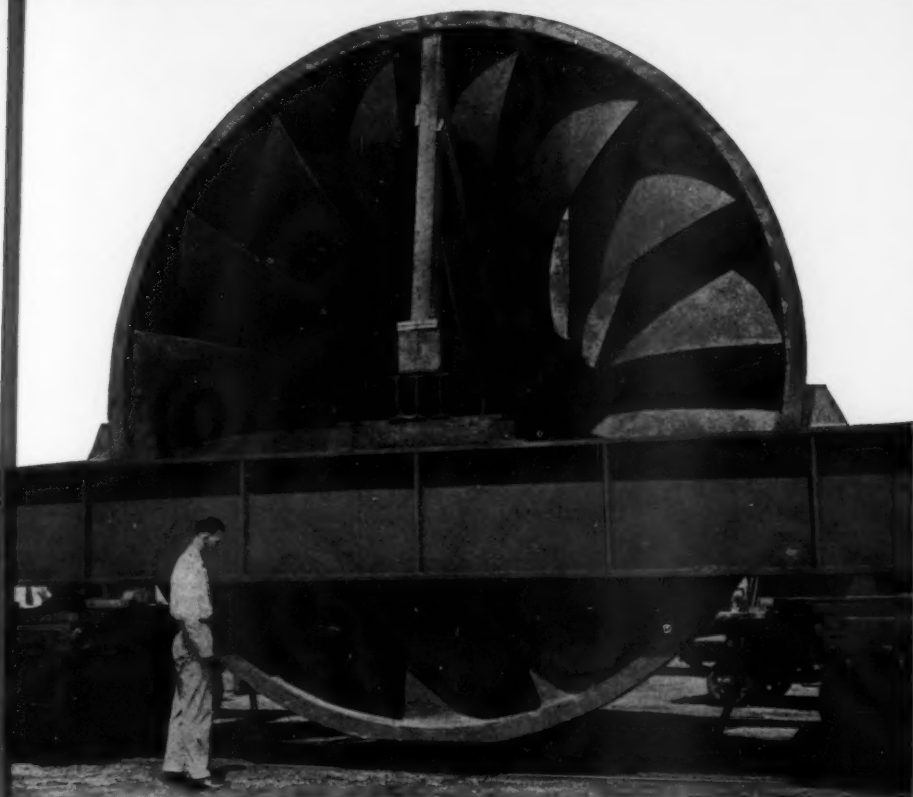
"Every national economic policy must be adjusted to the encouragement of full production. [From labor] there should be longer hours of work in face of the danger confronting us."

EDITORIAL STATEMENT  
*The Wall Street Journal.*

"In the past few years there has been built up a grand illusion that somehow a small group of government people can wave a wand and make everything work just right. Well, they can't."

M. A. MAY  
*Vice president, Dun &  
Bradstreet, Inc.*

"We are faced with the atomic threat, but it is no more startling than was the discovery of gunpowder, and no more loaded with the stuff of good and evil than the invention of the printing press or the discovery of electricity."



## FACILITIES FOR THE SMALLEST OR THE LARGEST

The 225-acre Newport News plant includes plate steel and machine shops equipped with a complete variety of tools to fabricate items of water power equipment of any size. Contracts received by Newport News for hydraulic turbines with an aggregate rated output in excess of 7,000,000 horsepower have included units as high as 165,000 horsepower and as low as 500 horsepower.

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Your inquiries for hydraulic turbines of any size will receive prompt attention.

Write for illustrated booklet on water power equipment.

**NEWPORT NEWS**  
**SHIPBUILDING AND DRY DOCK CO.**  
**NEWPORT NEWS, VIRGINIA**



## REMARKABLE REMARKS—(Continued)

MERRYLE S. RUKEYSER  
*Columnist.*

"It is little men, who inwardly feel their own insufficiency, who try to pull 'rank' on others."

CHARLES R. HOOK  
*Chairman, Armco Steel Corporation.*

"Without a steel industry which has had courage to expand constantly . . . it would have been impossible for our country to have attained its present unequalled development."

J. STEWART BAKER  
*Chairman of the board, Bank of the Manhattan Company.*

"[Inflation is so great a danger that] we are running the risk of being led involuntarily into increasing regimentation and control bordering on socialistic authoritarianism."

JOHN K. LANGUM  
*Vice president, Federal Reserve Bank of Chicago.*

"We should remember . . . that excessive reliance on controls merely postpones many of the problems and distortions brought on by war economy. There is no substitute for raising enough taxes, cutting nonessential government expenditures, and sound credit and public debt policies."

B. H. BECKHART  
*Professor of banking, Columbia University.*

"A central bank should not hesitate to allow rates to rise to whatever level proves necessary. Though interest costs on the debt rise, it is far better that this occur than that the American people constantly lose their savings through continued declines in the purchasing power of the dollar."

RICHARD T. F. HARDING  
*Columnist, Cleveland Plain Dealer.*

"The government as a steel maker could be neither sufficiently instructive nor entertaining to reward the taxpayer for what the performance would cost him. It could be expected to keep the books of business and to avoid taxes by methods applied in other fields it has invaded, methods neither edifying nor in keeping with the social principles it professes."

EDITORIAL STATEMENT  
*Chicago Journal of Commerce.*

"One of the most potentially destructive illusions harbored by millions of Americans nowadays is that their national economy renews itself automatically. They've forgotten that private investment is what makes the system tick. You find this state of mind even in government where some men apparently believe that lack of private investment can be made up from the public Treasury."

ELMER L. LINDSETH  
*President, Cleveland Electric Illuminating Company.*

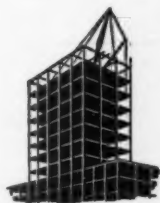
"A so-called excess profits tax, such as the one in effect during World War II, violates the principle of state regulation of utilities and is opposed to the public interest. [Under state regulation] any utility earnings after taxes, in excess of a fair rate of return, are supposed to accrue to the benefit of the customers in the form of lower rates, rather than to the government in the form of higher taxes."

AN ARCHITECT GOT A MONEY-MAN TO ADMIT,

"I never thought of floors in relation to earning power"

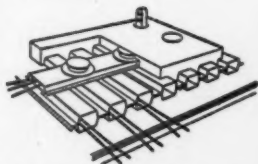


HERE'S WHAT THE ARCHITECT SHOWED



Why Q-Floor reduces building time 20 to 30%.

Q-Floor is steel subfloor, delivered pre-cut. Two men can lay 32 sq. ft. in 30 seconds. Construction is dry, incombustible. The Q-Floor is immediately used as platform by other trades. No delay for wet materials. No forms, no falsework, or fire hazard. Even when steel is slow in delivery, steel is still faster. You must allow time for demolition and excavation. By that time, the steel is ready. Steel construction gives a faster completion date. Completion time, not starting time, determines how soon your investment pays off.



Why Q-Floor keeps a building modern.

The steel cells of Q-Floor are crossed over by headers for carrying the wires of every electrical service, regardless of how many new business machines may be invented. An electrical outlet can be established on every six-inch area. It requires but a small hole, takes literally only a few minutes. No mow with trenches. Tenants can have as many outlets, changed as often and located exactly, as they please. Such permanently flexible floor plans keep a building permanently modern. The exterior may grow old-fashioned, but with live arteries of power in the floor, the building itself will never be electrically outmoded.

"Floors are such a small fraction of total cost, one tends to forget that floor space is actually what a building is for. You say a steel Q-Floor costs less than the carpet to cover it? Yet it provides electrical availability over the entire exposed area of the floor. And the steel construction, being dry, reduces building time 20 to 30%. These are factors any investor can easily translate into terms of money saved. They mean more revenue over the years and earlier revenue right from the start. Let's look at the details—"

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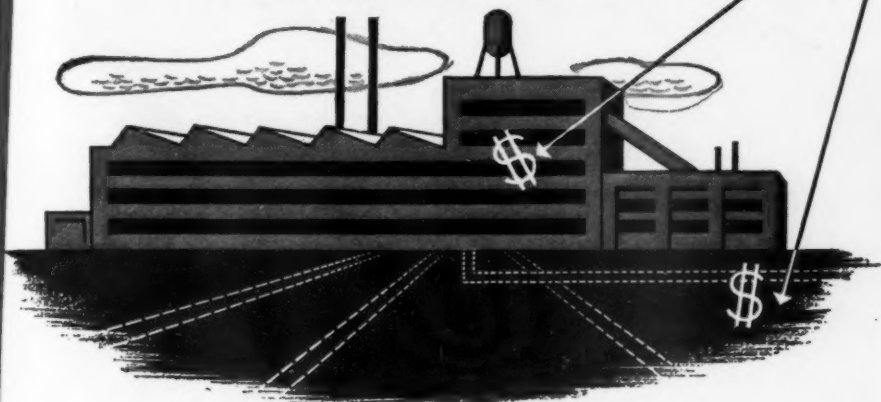
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reduce hidden costs . . .  
above ground and below!



*Today's corrosion rate is alarmingly high!* Unless you have adequate control, your business is incurring unnecessary losses. Either *directly*—due to high maintenance costs and replacement of corroded equipment; or *indirectly*—through losses due to idle equipment, loss of product and plant efficiency.

*EBASCO corrosion control consulting services are applicable to:*

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2. Manufacturing, processing and power plants—either on existing facilities or proposed new structures.

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**EBASCO can help you develop your own corrosion control program.**

EBASCO specialists not only can help you spot and remedy specific corrosion troubles—but can train your own personnel in setting up your own corrosion control program—so you can continue to keep down these "hidden" costs.

Remember . . . corrosion control is something you can't afford to put off. Call in EBASCO specialists—find out what they can do to help you protect your structures now, and for years to come.

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# 24 hours a day

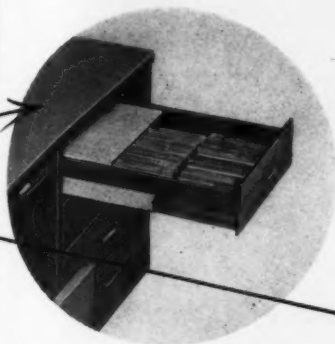
FOR YOUR LEDGERS,  
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There's something new—and important to you—in record protection equipment. The Remington Rand Multi-Plan Bookkeeping Safe-Desk, designed specifically for public utilities, provides 1-hour *Certified Protection* against damage by fire to records used within it.

Your Ledgers, Cashiers' Coupons, Meter Books and Controls all are *safe* not merely overnight, as in case of vault storage, but every minute of the day as well, right where they're used.

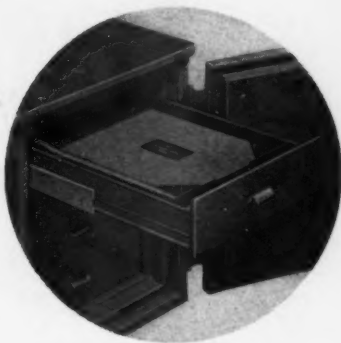
These time-saving, work-saving advantages of con-

centrating your customer accounts records at one convenient working location would be reason enough to adopt this desk as standard equipment. But when you get fire protection, too, for vital records that would be costly—or impossible—to replace, it's a deal that warrants looking into immediately. Send today for the free booklet. You're not limited, remember—the Multi-Plan Bookkeeping Safe-Desk adapts readily to *your* system. Both pedestals offer wide flexibility as to choice of drawers and drawer compartments.

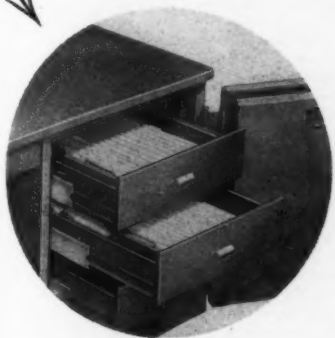


**FOR STUB PLAN.** The insulated book-keeping safe-desk set up for "stub" filing. Stub "packs" and "cash coupons" for current month are filed in top drawer—previous months in lower drawers.

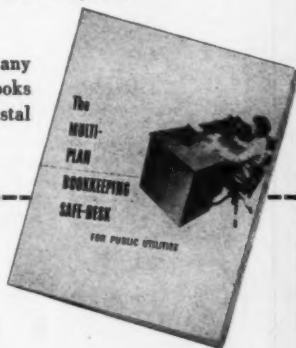
**FOR REGISTER PLAN.** Here, the right top drawer holds the current "register sheet-binder", which can be opened to a convenient angle for posting without removal. Cash coupons filed in rear of drawer. No heavy load to remove and replace.



**FOR TAB CARD PLAN.** Where tabulating cards are used, three cross-file trays per drawer, light in weight, afford ample filing space.



**METER BOOKS.** Under any of these plans, meter books are filed in the left pedestal of the desk.



## Remington Rand

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and independence  
of action..."**

**DONALD W. DOUGLAS**

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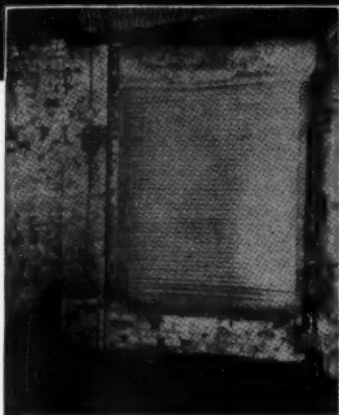
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# Regulation S-X

Form and Content of Financial Statements  
Required to be Filed with the S. E. C.

[ AMENDED ]

Copies of our January, 1951 edition of Regulation S-X as amended may be had upon request. This new edition of our booklet reflects the recent substantial amendments announced by the Securities and Exchange Commission effective December 20 and 29, 1950. The amendments are in part the result of discussions with and comment and proposals by accountants and other interested parties invited by the Securities and Exchange Commission during recent months.

As in the case of others in our series of booklets on S. E. C. matters, Regulation S-X is supplied as a complimentary service to executives, accountants, securities underwriters, lawyers and others connected with corporate finance or accounting.

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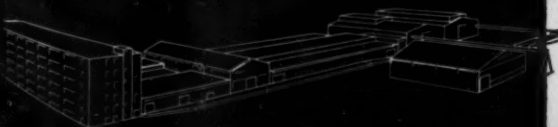
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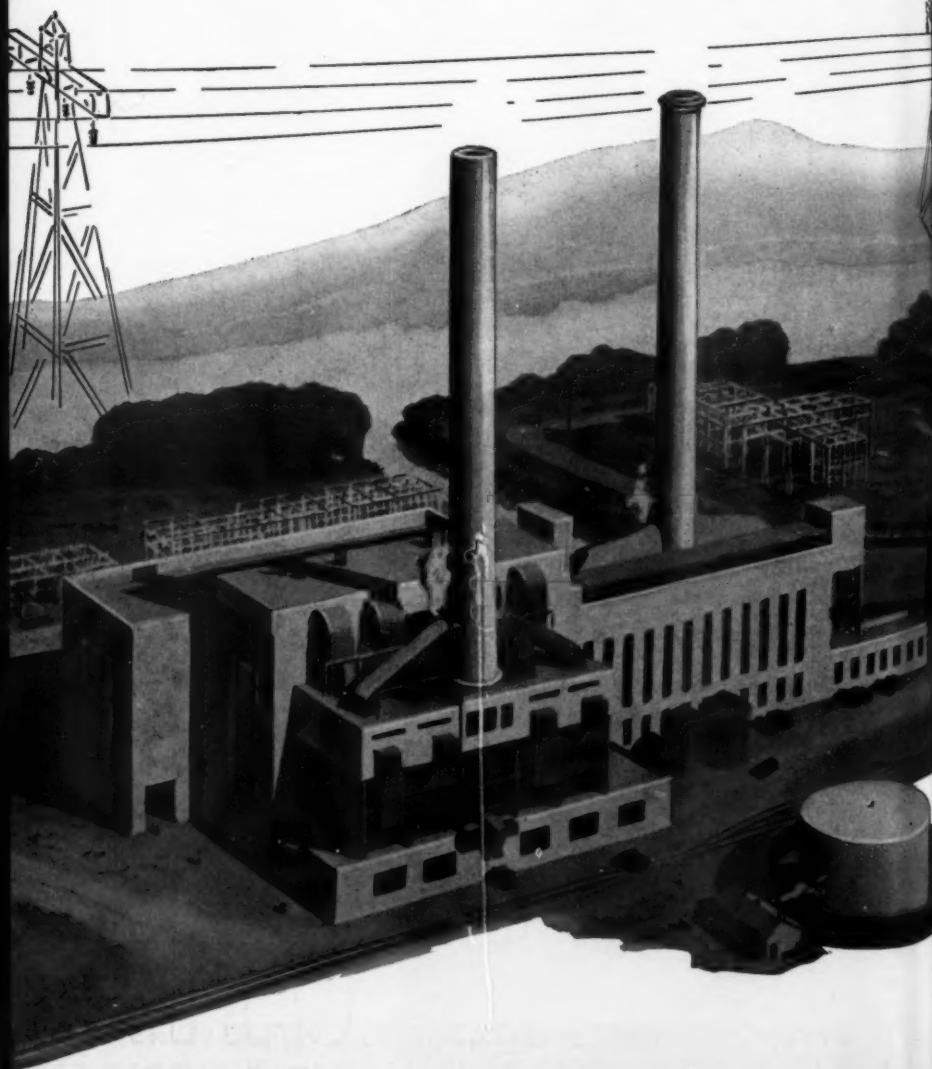
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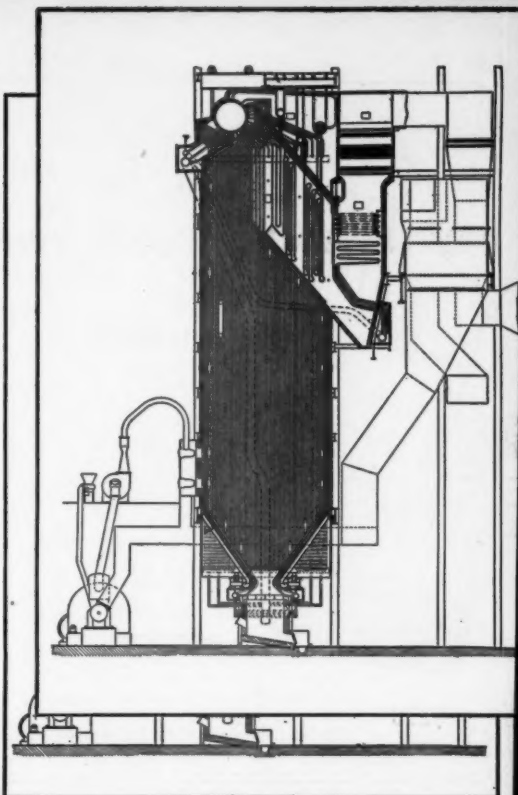
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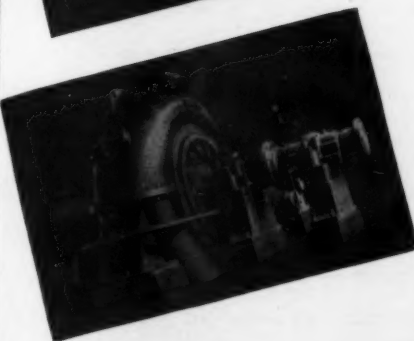
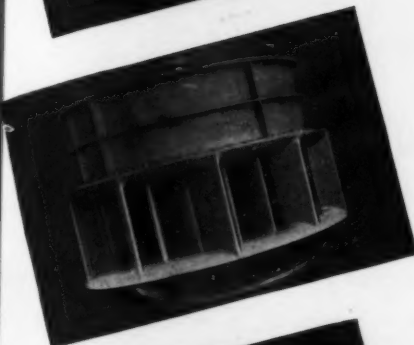
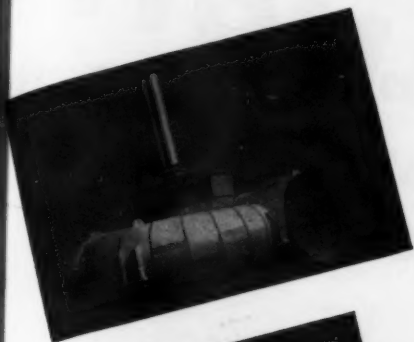
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## Utilities Almanack



JANUARY



18	T <sup>h</sup>	† Edison Electric Institute, Industrial Relations Committee, begins meeting, Detroit, Mich., 1951.
19	F	† National Association of Broadcasters begins television convention, Chicago, Ill., 1951.
20	S <sup>a</sup>	† Pennsylvania Electric Association, Transmission and Distribution Committee, will hold meeting, Pittsburgh, Pa., Feb. 1, 2, 1951.
21	S	† Louisiana Telephone Association will hold annual convention, Baton Rouge, La., Feb. 3, 4, 1951.
22	M	† American Institute of Electrical Engineers begins winter general meeting, New York, N. Y., 1951. ☺
23	T <sup>u</sup>	† Academy of Television Arts and Sciences holds annual dinner, Los Angeles, Cal., 1951.
24	W	† American Transit Association, Region IV, ends management, small operations, and maintenance meeting, Birmingham, Ala., 1951.
25	T <sup>h</sup>	† Minnesota Telephone Association will hold annual convention, St. Paul, Minn., Feb. 6-8, 1951.
26	F	† Southern Gas Association, Employee Relations Section, begins round-table meeting, Mobile, Ala., 1951.
27	S <sup>a</sup>	† South Carolina Broadcasters Association ends meeting, Columbia, S. C., 1951.
28	S	† Missouri Valley Electric Association will hold industrial and commercial sales conference, Kansas City, Mo., Feb. 8, 9, 1951.
29	M	† Adequate Wiring Bureau will hold annual conference, Cincinnati, Ohio, Feb. 15, 16, 1951.
30	T <sup>u</sup>	† North Central Electrical Association will hold electrical industries convention, Minneapolis, Minn., Feb. 25-28, 1951. ☺
31	W	† National Association of Broadcasters begins board meeting, Bellaire, Fla., 1951.



*Courtesy, Wisconsin Power & Light Company  
Photo by R. J. Fisher*

**Propane Air Gas Tanks**  
*Near Fond du Lac, Wisconsin*

# Public Utilities

## FORTNIGHTLY

VOL. XLVII, No. 2



JANUARY 18, 1951

## All That Vaporizes Is Not "Gas"

*During the "little biennial" of 1950, several state legislatures considered the question of regulating liquefied petroleum as a public utility. During the "big biennial" for 1951, this question is likely to come before quite a number of state legislatures. Here is an analysis of both the law and the nature of liquefied petroleum gas with respect to its status as a utility.*

By ARTHUR C. KREUTZER\*

VICE PRESIDENT AND COUNSEL, LIQUEFIED  
PETROLEUM GAS ASSOCIATION, INC.

Is the distribution of liquefied petroleum gas a public utility operation? This question is likely to be debated in many state legislatures and within state commissions in the near future. Many state bodies have considered this question in the past—all coming up with a negative answer. However, with the continued growth of the industry to an estimated 7,500,000 domestic users in 1951 attracting attention, it cannot help but have its

position scrutinized, particularly when a cursory glance reveals a product bearing the word "gas" in its name being used for many of the same fuel purposes as gases distributed by utility plants.

In this case appearances are doubly deceptive and a closer look should be taken. In adjusting our sights, we will find that liquefied petroleum gas is a hydrocarbon secured from: (1) natural gasoline plants, (2) cycling plants, and (3) cracking and refining of crude oil. It includes products

\*For personal note, see "Pages with the Editors."

## PUBLIC UTILITIES FORTNIGHTLY

composed of the following hydrocarbons or mixtures of them: propane, propylene, butane, and butylenes. It exists in combination with other hydrocarbons as a liquid in its natural state. After passing through processing plants for separation, it is transported to bulk stations throughout the country by tank car, transport tank truck, water tanker, or barge and liquid pipeline. These bulk stations—it is estimated that there are over 3,000 of these—serve as distributing points. These stations have bulk storage tanks sufficiently large to receive tank cars or bulk transport shipments.

**I**N one type of operation bulk delivery trucks are filled at these stations and then deliver the liquefied petroleum gas into permanent containers installed on the consumer's premises. Where portable containers are used, these containers, or cylinders, are filled at the bulk stations and delivered either direct to the consumer or to local dealers for subsequent delivery to the consumer. Liquefied petroleum gases are dispensed at the point of usage by two general methods: (a) permanent tank systems, and (b) portable cylinder systems. These fundamental types of systems are further divided, in the case of permanent tank systems, into underground tank systems and above ground installations, and in the case of cylinder systems, into delivered cylinders, and self-service cylinders. Where tank systems are installed, the liquefied petroleum gas is measured for invoicing purposes by liquid meters or liquid gauges located either on the tank trucks or the installed system itself, or by vapor meter located

in the system. These tanks may be owned by either the liquefied petroleum gas distributor or the customer. It may be sold either by gallonage measurement, by meter measurement in the liquid phase, or by meter measurement in the vapor phase with various trade units of measurement being used. When vapor meters are used, the meter is located between the tank and the utilization appliance and the customer is billed for the product as it is used. In the vast majority of these tank installations, the tank serves a single customer. In some instances, a bulk tank and all necessary equipment, entirely located on private property, may serve a number of customers. In these instances, the product is metered in the vapor stage at the consumer's premises. In its industrial use, it is generally distributed direct from tank car or large truck transport to large bulk storage tanks located on the premises of the user.

**I**N a few instances, large bulk tanks may serve an entire community with the product being distributed through mains or pipes crossing public property, as in a natural or manufactured gas system. In the majority of these town operations the liquefied petroleum gas is mixed with air and piped and sold as a propane air or butane air mixture. In such instances, it might be considered a "manufactured gas." It should be noted, however, that where the product is sold in its undiluted form and not mixed with air, it is not a manufactured or natural gas as those terms are commonly defined and used. An operation serving an entire community in this fashion is not ordinarily thought of as being

## ALL THAT VAPORIZES IS NOT "GAS"

part of the business of distributing liquefied petroleum gas.

In the case of cylinder systems, empty cylinders are removed and replaced by full cylinders which are delivered by truck from local warehouses. Liquefied petroleum gas supplied in cylinders is usually measured for invoicing purposes by weight, the weighing being done at the bulk station on inspected scales. In some instances, however, liquefied petroleum gas supplied through cylinder systems may be measured for invoicing purposes on the consumer's premises by meters in the vapor phase. There is also an additional cylinder system operation in the supplying of self-service portable containers. In that method of distribution, the cylinders are secured from local dealers' stock by consumers and are connected to the system by the consumer.

Liquefied petroleum gas is used in the home as a fuel for cooking, water heating, refrigeration, and house heating. Differing from the utility gases, it also has a multiplicity of farm and industrial uses; being used on the farm as a tractor fuel and for many miscellaneous purposes where heat or power is desired. In its industrial applications, it is used as a fuel for internal combustion engines, heat treat-

ment of metals, cutting, and various other applications. Liquefied petroleum gas is also being used, in a rapidly expanding market, as an automotive motor fuel. You can even buy cigarette lighters that use it as a fuel.

With this basic information at hand, a close analysis of the product and the business of selling liquefied petroleum gas points up definite and distinct lines of difference between the distribution of liquefied petroleum gas and a utility operation. An examination of the product will first reveal their dissimilarity.

### *Differences in the Product Handled*

WHILE liquefied petroleum gas bears in its name the term "gas," it is a liquid when delivered to the consumer's premises. From the time of its manufacture and production until the time of its final utilization, it is treated and handled as a liquid. It is transported as a liquid. It is stored as a liquid. It is distributed as a liquid and, in the major number of transactions, it is sold as a liquid, either by gallon or weight. Vapor metering, as may be done in some instances, is simply used as a convenient method of measurement and sale. The method of transportation, handling, storage, distribution, and sale of liquefied pe-



**Q** "ONE of the distinguishing marks of a utility operation is that it be affected with a public interest. The distribution of liquefied petroleum gas is not so affected with a public interest. There is no holding out or offer to service the public at large. The mere fact that it may be considered to be of the nature of one of the necessities of life should not affect an industry with a public interest. The public is no more dependent upon liquefied petroleum gas than it is upon other fuels distributed in a similar manner . . ."

## PUBLIC UTILITIES FORTNIGHTLY

troleum gas are all designed for a liquid product. Webster's unabridged dictionary defines gas as:

An aeriform fluid; a term used at first by chemists as synonymous with air, but since restricted to fluids supposed to be permanently elastic, as oxygen, hydrogen, etc., in distinction from vapors, as steam, which become liquid on a reduction of temperature. In present usage, since all of the supposed permanent gases have been liquefied by cold and pressure, the term has resumed nearly its original signification, and is applied to any substance in the elastic or aeriform state.

This definition has been quoted with approval by the courts.<sup>1</sup> The Nebraska Supreme Court has called gas "matter in the aeriform state." Liquefied petroleum gas is not in an aeriformed state in its distribution. Following this train of thought the Florida Supreme Court and the Maryland Public Service Commission<sup>2</sup> have both found liquefied petroleum gas products to be liquids and not gases.

THE fact that a commodity is capable of producing a gas should not lead us to classify it as such. All fuels, including coal and wood, are capable of producing gas and burn as vapors of gas and not as solids. A certain amount of heat (latent heat of vaporization) is required to convert liquefied petroleum gas to a gaseous form. This heat is furnished generally in three ways: (a) by a separate heated vaporizer or heat exchanger, (b)

from the atmosphere of ground surrounding the wall of the container, (c) from the liquid itself, resulting in rapidly reducing the temperature and vapor pressure of the product.

THE various liquefied petroleum gases are hydrocarbons with specific chemical properties by which they can be distinguished. These chemical characteristics are not common to natural or manufactured gas, the usual utility gases. The term manufactured gas has a specific, common, and ordinary meaning. Manufactured gases are complicated mixtures of various forms of hydrocarbons. They vary substantially, depending on type of manufacture. A common type of manufactured gas is water gas, manufactured from coal and steam and consisting in the main of carbon monoxide and oxygen. The formulas for manufactured gases are not the same or similar to the formulas for liquefied petroleum gases. Neither can liquefied petroleum gas be considered a manufactured gas in any sense of the meaning of the term manufactured.

The chemical formulas or composition of liquefied petroleum gas remain the same from the time it is taken from nature until its final utilization. In no way is its composition altered, in order to be used, or in the transition from liquid to vapor state. This is not true of manufactured gas. Manufactured gas is, as its name implies, manufactured. Its composition and chemical characteristics are changed from that of the material originally entering the process of manufacturing. Neither are the liquefied petroleum gases alike in

<sup>1</sup> *Lamar v. Iowa State Traveling Men's Asso.* (1933) 216 Iowa 371, 249 NW 149; *Birss v. Order of United Commercial Travelers of America* (1922) 109 Neb 226, 190 NW 486.

<sup>2</sup> *Lee, State Comptroller v. Wood* (1936) 126 Fla 104, 170 So 433; in *Re Philgas Co.* (1934) 25 Md PSCR 102.

## ALL THAT VAPORIZES IS NOT "GAS"



### Monopoly versus Competition

**"W**HILE there is no desire to debate which was first, the hen or the egg, it remains a fact that one of the marks of a public utility is the monopolistic characteristics of its operations. This factor of monopoly gives rise to a reason for public protection through control and regulation. Contrariwise, the liquefied petroleum gas industry is a highly competitive industry."

chemical composition to the natural gases. Natural gas has, as its accepted chemical constituents, methane and ethane or mixtures of the same.

Appliances used for liquefied petroleum gas vary from appliances used for natural or manufactured gas. Many range manufacturers, for example, make a specific range for liquefied petroleum gas use. The American Gas Association Laboratories recognize this difference by placing an approval seal for liquefied petroleum gas on ranges constructed for that purpose.

**L**IQUEFIED petroleum gas differs from manufactured or natural gas in its variety of uses. In addition to being used for domestic purposes and similar industrial purposes as natural or manufactured gas, it is used in many fields in which natural and manufactured gas cannot be utilized, as has been outlined earlier.

It is noteworthy that the standards of safety are distinct and separate because of the intrinsic differences in the product. The standards of safety for liquefied petroleum gas are prescribed in the National Board of Fire Underwriters Pamphlet No. 58, which pamphlet does not apply to natural or manufactured gas. These standards have been adopted and issued as state safety regulations in most of the 48 states.

The distinction between the products is emphatically recognized in the statutes of New Mexico which define a public utility as:

Any plant, property, or facility for the manufacture, storage, distribution, sale, or furnishing to or for the public of natural or manufactured gas, or mixed or liquefied petroleum gas, for light, heat, or power, or other uses; but the term "public utility" or "utility" shall not include any plant, property, or facility used for or in connection with the business of manu-

## PUBLIC UTILITIES FORTNIGHTLY

facture, storage, distribution, sale, or furnishing of liquefied petroleum gas in enclosed containers or by tank truck for use by others than consumers who receive their supply through any pipe-line system operating under municipal authority or franchise, and distributing to the public.

### *The Sale of a Commodity and Not Of a Service*

THE sale of liquefied petroleum gas is a merchandising operation, the sale of a commodity and not of a utility service. The distribution of liquefied petroleum gas involves the distribution of a tangible product. It is handled and sold as a bulk item, not as a service. In the case of cylinder or bottled gas distribution, the liquefied petroleum gas is sold as a packaged item in containers. A metered sale does not change the essential merchandising nature of the transaction as the Ohio Supreme Court<sup>3</sup> found where "The gas company proposes to sell artificial gas by meter measure to parties who live in the suburbs of cities or near thereto, for light, heat, and other purposes. . . . The gas is piped to each patron from the group tank by pipes laid underground, as may be necessary, across the lots of the members of the group." The court termed the operation "as simply a merchandising operation." This line of thought has been followed elsewhere.<sup>4</sup> The Indiana commission stated:

Another differentiating factor is that in the sale of bottled gas the seller

is in fact selling a product which is subject to and is packaged, while in the case of a public utility, the utility is selling primarily a service and supplying a commodity which is not tangible in the sense that it can be packaged and parceled.

### *Does Not Bear the Distinguishing Marks of a Public Utility*

ONE of the distinguishing marks of a utility operation is that it be affected with a public interest. The distribution of liquefied petroleum gas is not so affected with a public interest. There is no holding out or offer to service the public at large. The mere fact that it may be considered to be of the nature of one of the necessities of life should not affect an industry with a public interest. The public is no more dependent upon liquefied petroleum gas than it is upon other fuels distributed in a similar manner such as coal, wood, kerosene, or fuel oil. There are many necessities of life, including such prime necessities as food and clothing, whose distribution and sale are not considered a public utility subject to regulation.

The distribution of liquefied petroleum gas makes no demands on the public for privileges peculiar and characteristic of a public utility, such as the right to use public property and the exercise of eminent domain over private property.

An ordinary gas company is usually characterized by certain features which are lacking in the case of a marketer of liquefied petroleum gas. For example, a gas utility has mains by which the gas is delivered to users. This installation of these mains requires, generally, the use of easements along or across public highways or the

<sup>3</sup>Paramount Gas Utilities Co. v. Public Utilities Commission (1932) 125 Ohio St 211, 180 NE 897.

<sup>4</sup>Public Utility Commission v. Solgas, Inc. (Pa 1940) 38 PUR NS 30; Re Oatman (Ind 1948) 78 PUR NS 334.

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exercise of eminent domain over private property.

The operation of a public utility, moreover, requires a monopolistic form of business in order that competition will not affect the service rendered to the public. The liquefied petroleum gas distributor does not have these requirements. The method of delivery used by him is no different than the method used in delivery of coal, wood, kerosene, or oil to the premises of the consumer, and to single him out and call him a utility would appear discriminatory and unreasonable under the law.

In the Oatman Case, the public service commission of Indiana made the following statement:<sup>5</sup>

For this commission to determine under the provisions of the Utility Act that it has jurisdiction over the sale of this type of commodity merely because the ultimate use of such a commodity is for the generation of heat or light, would necessarily mean that the commission would also have to assume jurisdiction over the sale of oil, coal, wood, kerosene, gasoline, and all products or commodities used or usable for the generation of heat or light. Certainly the general assembly in enacting the Utility Act as amended did not contemplate and could not have contemplated any such a broad interpretation. There is a distinct difference between the operation of a public utility engaged in the sale and distribution of electricity, gas, water, or the rendition of tele-

phone service and that of one engaged in the distribution and sale of bottled gas.

It is also an attribute of a public utility that it be affected with a public interest. It should be remembered that a mere legislative declaration with regard to this is insufficient. This point the United States Supreme Court has made clear.<sup>6</sup> It has also said:<sup>7</sup>

A business or property, in order to be affected with a public interest, must be such or be so employed as to justify the conclusion that it has been devoted to a public use and its use thereby in effect granted to the public. . . . Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance.

In view of this statement, it would seem that the question of whether the business of an LP-gas marketer has become clothed with a public interest would turn in some degree upon the question as to whether the public has become peculiarly dependent upon the business and whether the marketer has evidenced an intent to grant the use of the business to the public. The situation in the case of the LP-gas marketer is very much like that ex-

<sup>5</sup> Wolff (Charles) Packing Co. v. Court of Industrial Relations, 262 US 522, 539, PUR 1923D 746.

<sup>7</sup> Williams v. Standard Oil Co. 278 US 235, 240, PUR 1929A 450.



**Q** "LIQUEFIED petroleum gas is not generally merchandised or sold as a 'gas' but is sold as a particular or specifically branded product. This is true in all types of operation and methods of distribution carried on by the industry."

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pressed by the U. S. Supreme Court<sup>\*</sup> in the Duke Case:

Plaintiff is a private carrier. His sole business is interstate commerce, and it is limited to the transportation covered by his three contracts. He has no power of eminent domain or franchise under the state, and no greater right to use the highways than any other member of the body public. He does not undertake to carry for the public, and does not devote his property to any public use. He has done nothing to give rise to a duty to carry for others. The public is not dependent on him or the use of his property for service, and has no right to call on him for transportation.

**I**T would also appear that a private business, operated under private contracts, and not devoted to a public use, should not by legislative fiat, or order of a public service commission, be declared a public utility, since there would be in a sense the taking of private property for public use without just compensation, inconsistent with the due process clause of the Fourteenth Amendment of the United States Constitution.

Neither is there a dedication to public use in the distribution of liquefied petroleum gas. Liquefied petroleum gas is not sold to the general public like the utility gases but is sold only to selected customers on written contract. There is no open offer of sale. The means of transportation necessary to bring the product to the customer and other incidental matters in connection with the transportation, handling, and storage indicate that the product is not adaptable to the sale, distribution, and furnishing to the

public at large in unlimited quantities. This proposition is forcibly stated by the Indiana commission in the Oatman Case:

Necessarily, the service rendered by a public utility is so dedicated to the public that it becomes affected with the public interest. There is an offer to sell to and serve the public generally, the right of use of public property and condemnation of private property. Such is not the case in the sale of bottled gas which is a merchandising business. Each sale is an independent sale and transaction between the seller and the individual customer. The seller does not hold himself out nor is he expected to sell to the public generally but on the contrary sells his commodity to selected customers under written contracts under various brand trade names.

**L**IQUEFIED petroleum gas is not generally merchandised or sold as a "gas" but is sold as a particular or specifically branded product. This is true in all types of operation and methods of distribution carried on by the industry. There are hundreds of such brand names used within the United States such as Philgas, Skelgas, Pyrofax, Shellane, Essotane, Protane, etc. The containers on the consumer's premises may be the property of the distributor, leased or loaned to the customer with the requirement of a substantial deposit, or they may be sold outright. But there is no general open offer of their use. The high cost of equipment at the consumer's premises precludes this. This, and the numerous and varying methods of distribution, the sale under various brand and trade names, contradicts common dedication to the public use.

While there is no desire to debate

<sup>\*</sup>Michigan Pub. Utilities Commission v. Duke, 266 US 570, PUR 1925C 231.

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which was first, the hen or the egg, it remains a fact that one of the marks of a public utility is the monopolistic characteristics of its operations. This factor of monopoly gives rise to a reason for public protection through control and regulation. Contrariwise, the liquefied petroleum gas industry is a highly competitive industry. This is illustrated by the fact that present estimates indicate that there are over 3,000 bulk plant distributors and an excess of 25,000 dealers within the United States. If we will divide the 7,500,000 customers among these dealers, it would also appear that no one is too big. Presence of this competition is forcibly demonstrated by the fact that in some instances liquefied petroleum gas operators have sought public utility status to eliminate competition. The Ohio court said in the Paramount Case:

If any mercantile establishment, selling its goods to the public in general, could have its business adjudged as falling within the jurisdiction of the commission, and thereby eliminate, or at least greatly diminish, competitors from unfairly coming into a determined field, evidently all distinction between mercantile operations, carried on by persons, partnerships, corporations, or associations, and public utilities, as now generally recognized by law, would promptly disappear, and the commission would, quite as promptly, be completely swamped in

any effort the commission might make to take care of the situation thus arising, and the general provisions of the public utilities law would become broadened far beyond anything that the legislature ever had in mind in the enactment of the public utilities statutes.

THAT the courts and commissions have taken all of these factors into consideration is indicated by the fact that they have been unanimous in disapproving the theory that the distribution of liquefied petroleum gas is a public utility. In addition to the reported cases that have been mentioned, lower courts in the states of Alabama, Arizona, and Louisiana<sup>9</sup> have acted in a similar fashion. It would, therefore, appear that it is to the best interests of the public to encourage the continuance of this young and flourishing industry as a private enterprise. While this industry might be considered a "kissin' cousin" of the gas utilities, the ties exist only in a mutual desire to provide the public with a modern fuel, and not from any relationship in the product sold, method of distribution, or general nature of operations. We're kith but not kin.

<sup>9</sup> Green's Fuel of Florida, Inc. v. Alabama Pub. Service Commission (Ala Cir Ct 1944); Butane Corp. v. Arizona Corp. Commission (Ariz Super Ct 1949) No. 56230; Broyles v. Louisiana Liquefied Petroleum Gas Commission (La Dist Ct 1949) No. 31, 182.

**CORRECTION:** *Louis V. Sutton, president of Carolina Power & Light Company (also head of the Edison Electric Institute), was inadvertently and erroneously quoted in the January 4th issue of PUBLIC UTILITIES FORTNIGHTLY as saying that "planned expansion of private electric companies will be insufficient to meet prospective demands." This statement was made by, and should have been credited to, Secretary of Interior Oscar L. Chapman. The FORTNIGHTLY regrets this typographical slip.*



## Are Federal Agencies Trying to Block Hydro Development?

*The Virginia Electric & Power Company started out to build a modest little dam on the Roanoke river in North Carolina. That was more than two years ago. Vepco's struggle to obtain the dam license, against the concerted opposition of the REA and the Department of the Interior, adds up to a revealing story of Washington's public power philosophy.*

By JAMES J. KILPATRICK\*

ON October 6, 1948, the Virginia Electric & Power Company filed its application with the Federal Power Commission for authority to build a dam across the Roanoke river just above Roanoke Rapids, North Carolina. On the following day, Vepco's President Jack G. Holtzclaw optimistically told a newspaper reporter that the project thus set in motion would go into construction early in 1949, and would be feeding power into Vepco's system by the spring of 1951.

More than two years later, the dam remains unbuilt, and the Roanoke river still wastes its waters to the sea.

\*For personal note, see "Pages with the Editors."

JAN. 18, 1951

Vepco has won two rounds in its fight before the FPC, but months of tedious litigation still lie ahead. If Vepco ever builds the dam, it will be figuratively over the dead bodies of the REA and the Secretary of the Interior.

What the company's application actually set in motion was what I might have termed in my newspaper, "Operation Dog in the Manger." The evidence demonstrated that coöperatives cannot use power from a dam at Roanoke Rapids efficiently. But they do not want Vepco to have it. And the chief spokesman for the Secretary of the Interior testified, in so many words, that he would rather not see the dam built at all unless it can be built from tax funds. The case has

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the unreality of a bad dream. But the warning to this nation's private power industry, as that warning is embodied in 3,400 pages of testimony, is very real indeed.

ONE might trace the story of the Roanoke Rapids project back to 1871, when Congress authorized a 5-foot navigation channel in the Roanoke river from Palmyra to Weldon, but from the standpoint of hydroelectric power a better start can be made in the early 1930's. Vepco obtained permission to build a Roanoke Rapids dam at that time, but let the authority lapse unused. In 1934, even Army Engineers thought development of the river was not economically justifiable. Coal was only \$4 a ton then, and the depression made new ventures exceedingly difficult; besides, Vepco hadn't yet acquired the Virginia Public Service Company, and Roanoke Rapids was remote from its load centers.

In 1936 came the Flood Control Act of the 74th Congress, and in 1938 came congressional authorization for the first two multiple-purpose dams in the nation. Early in the 1940's, Army Engineers undertook a survey of the Roanoke river valley in Virginia and North Carolina; in 1944, they recommended a general plan for comprehensive development of the basin's resources. This plan called for three projects directed primarily at flood control—Buggs Island, Philpott, and Smith Mountain—and eight projects designed wholly and entirely for the hydroelectric generation of energy. Roanoke Rapids was among these eight.

This general plan went to Congress and was approved in the Flood Con-

trol Act of 1944. In this same enactment (PL 534, 78th Congress, 2nd session), Congress authorized construction of the Buggs Island and Philpott reservoirs.<sup>1</sup>

Four years later, the Virginia Electric & Power Company turned its attention again toward Roanoke Rapids. Beyond the general "approval" it had extended in 1944, Congress had done nothing further toward development of the Roanoke basin. In the meantime, coal had reached \$10 a ton and Vepco's demand for energy had gone soaring. The company in 1944 had acquired the Virginia Public Service system on the southwestern border of its territory. Vepco's maximum load had reached 576,000 kilowatts by 1948, and engineers were predicting a load of 815,000 kilowatts by 1954. Two giant steam plants were under construction to meet the growing demand, but new power sources obviously were needed badly. A new source appeared specially desirable in the Roanoke Rapids area, where a demand of 65,000 kilowatts could be foreseen by 1954.

THE answer seemed apparent to Vepco engineers. The company could obtain 91,000 kilowatts of dependable capacity from a dam at Roanoke Rapids. Here was a project ideally suited for feeding "peaking" power to an established utility system. Energy from the dam could be tied into Vepco's network by building only 1.6 miles of line and installing one

<sup>1</sup> Buggs Island and Philpott together were estimated then at \$36,140,000, and the whole eleven projects at \$124,000,000; it is interesting to note that Buggs Island alone now is placed in excess of \$75,000,000.

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additional circuit plus necessary switching facilities. The dam would cost perhaps \$27,000,000, but Vepco already owned all the land and for forty-three years had operated a small diversion dam at the site. A new hydro plant at Roanoke Rapids would be at least \$143,000 a year cheaper to operate than a steam plant of equivalent capacity.

So Vepco prepared plans for a concrete dam 2,840 feet long, to create a reservoir covering 4,900 acres. And in October, 1948, the company filed its application with the FPC for authority to build that dam.

And then the roof fell in.

The Secretary of the Interior and the REA promptly intervened in opposition to the license. They proclaimed that Congress had reserved Roanoke Rapids exclusively for Federal construction. The FPC had no jurisdiction, in their view. But if—*per argumentum*—the FPC did have jurisdiction, then the project was infeasible, inadvisable, unfair, improper in half a dozen different ways, and thoroughly opposed to the public interest.

In months to come, the opponents were to argue that the project was so unsound economically that the FPC should not grant the license; simultaneously, they were to argue that Roanoke Rapids was so valuable—the “best in the basin”—it should be reserved for the Federal government.

They were to insist that the dam could not be operated effectively without a contract between Vepco and Buggs Island, and that it could not be operated profitably *with* a contract. They were to insist that Vepco would make too much money from Roanoke Rapids, and in the same breath that the company would find it “ruinously expensive.” They were to argue that the basin’s resources should be developed, but that Vepco should not develop them; they were to plead that the Roanoke river’s water not be wasted, but that Vepco not be permitted to use it.

THE fight opened before the FPC on May 12, 1949. Vepco’s case-in-chief was simple and to the point. The company submitted evidence to show that it was financially able to build the dam; that it would commence construction immediately upon the granting of a license; that it needed the power to serve its customers; that the engineering design was sound; that the dam would have no effect, either adverse or beneficial, upon flood control or navigation; that it would not affect the government’s ability to dispose of Buggs Island power; that fish life would be protected and pollution control would not be hampered.

But the company found at the outset that its attorneys would have to combat not facts, but philosophy; it

“ONE might trace the story of the Roanoke Rapids project back to 1871, when Congress authorized a 5-foot navigation channel in the Roanoke river from Palmyra to Weldon, but from the standpoint of hydroelectric power a better start can be made in the early 1930’s.”

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would have to defend itself from a series of novel concepts, strange mathematics, and unorthodox interpretations of law. In the long run, Vepco fought out the whole issue of public power as opposed to power developed for public use by private tax-paying business corporations.

The first hurdle came when opponents raised a jurisdictional argument. They noted that while Congress in 1944 had *authorized* only two specific projects in the Roanoke basin and had *appropriated funds* only for these, it had *approved* a "general plan for the comprehensive development of Roanoke river basin for flood-control and other purposes." Because this general plan included Roanoke Rapids, it was urged that Congress thus had preempted jurisdiction over the eight power sites for exclusive Federal development.

These dog-in-the-manger semantics were something new to the FPC, and Examiner Hampton found the issue "not altogether easy to decide." In his first decision of March 17, 1950, he devoted 22 pages to a summation of arguments on this point, before reaching the reasonable conclusion that "to approve" and "to authorize" are two entirely different verbs. Certainly this distinction has often been recognized by Army Engineers and by key members of Congress. To conclude that congressional "approval" constituted a "keep out" sign forever against private utilities would be to conclude that Congress was willing to let some projects lie undeveloped for a half-century or more.

**T**HIS indifferent view of a natural resource, it developed, did not

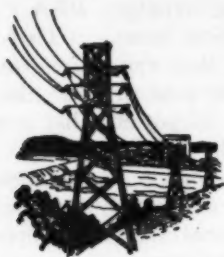
seem objectionable to Interior and the REA.

They didn't know when, if ever, Congress might provide another nickel for the Roanoke river basin, but that was up to Congress and not the FPC.

When Mr. Hampton ruled against them on that unusual line of argument, the opponents tried another equally strange: They insisted *the FPC itself had given its jurisdiction away*. It appeared that during House hearings on the Roanoke basin plan, the FPC had dispatched a routine letter, in reply to a request for comments, concurring in the Army Engineers' conclusion that the basin should be developed in comprehensive fashion. Through some curious reasoning, apparently based on an interpretation of § 7(b) of the Federal Power Act, opponents felt that the commission thus had divested itself of any further say-so in the matter. Examiner Hampton failed to see any merit in this contention.

When these jurisdictional assaults failed, Interior and the REA began a series of baffling objections to the project on its merits.

**R**OANOKE RAPIDS lies 40 miles below Buggs Island dam. When Buggs Island goes into operation in 1952, water released at Buggs Island will reach Roanoke Rapids eight and one-half hours later. Without a specific contract governing water release, opponents insisted, Vepco could not hope to operate a dam satisfactorily at Roanoke Rapids. The opponents hinted strongly that such a contract might be hard to come by. But Vepco demonstrated that Roanoke



### Congressional Intent on Project Approval

*"... 'to approve' and 'to authorize' are two entirely different verbs. Certainly this distinction has often been recognized by Army Engineers and by key members of Congress. To conclude that congressional 'approval' constituted a 'keep out' sign forever against private utilities would be to conclude that Congress was willing to let some projects lie undeveloped for a half-century or more."*

Rapids would operate at full dependable capacity with only the natural stream flow, and counsel obtained from Ben Creim, administrator of the new Southeastern Power Administration, an unequivocal pledge that Buggs Island would not be operated on a rule-or-ruin basis, so as to deprive Roanoke Rapids of a normal volume of water.

**N**EXT, the opponents said Vepco could not operate *with* a contract. They summoned George W. Hamilton, a consulting engineer, to testify on what Vepco might have to pay under § 10(f) of the Federal Power Act for headwater benefits from Buggs Island. Mr. Hamilton reckoned that Roanoke Rapids would take half of the Buggs Island storage investment, so he divided by two and came up with a bill against Vepco of \$690,000 annually. That such a proposal would

saddle Roanoke Rapids with all of its own costs and half the cost of Buggs Island—or as much as three-fourths of the combination of both—seemed not to disturb Mr. Hamilton.

When this form of division failed to prove impressive, the opponents tried multiplication: They produced a witness who figured that Vepco was getting \$40,000 a year in benefits from its existing 6,000-kilowatt installation at Roanoke Rapids, or about \$6.66 per kilowatt. The proposed new generating plant would produce perhaps 97,000 kilowatts, so \$6.66 times 97, and *voila!* \$650,000. The witness' arithmetic was unimpeachable on its own premises, but his logic in comparing a small run-of-the-river plant with no pondage to the \$27,000,000 plant proposed by Vepco left something to be desired.

In view of the interveners' insistence that the government, and the gov-

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ernment only, should have power from Roanoke Rapids, the question naturally arose: What would the Secretary do with the power if he had it? Here the government witnesses fell back on the broad assertion that, with all that cheap power available, preferred customers would show up from somewhere to buy it.

Mr. Hampton found, however, that the Virginia REA coöperatives could use only a part of the power anticipated at Buggs Island, and that only if they are successful in a bid to erect their own base steam plant and to build transmission lines. North Carolina coöperatives have no greater demand. One large potential customer—the city of Danville, Virginia—has read the proposed limitations on resale rates and already has told Mr. Creim where he could take his power. In short, the evidence demonstrated that the Secretary was not prepared to sell to preferred customers *even the power he had in sight, let alone an additional 91,000 kilowatts from Roanoke Rapids.*

THE interveners shifted their assault to a new flank: Vepco would be taking unfair advantage of the government's tremendous investment at Buggs Island; Vepco would be "picking up the apples after the taxpayers had shaken them down." The opponents' reasoning on this point, as on so many points, is hard to follow. The evidence showed that (1) Roanoke Rapids was economically feasible even if Buggs Island never were built; (2) Vepco would pay for whatever benefits it received from orderly regulation of downstream flow; (3) Vepco would pay Federal income

taxes estimated at \$713,000 to \$761,000 annually, plus local taxes estimated at \$304,000; and (4) Vepco would pay, of course, the original cost of the dam. A government witness finally conceded that if Vepco did not pay these taxes into the Federal Treasury, someone would have to pay them—or, he suggested happily, the government might *borrow* the money!

HAVING thus complained that the Roanoke Rapids site was entirely too valuable for a private utility to exploit, the interveners thereupon insisted it was not valuable at all. One witness incredibly charged that Vepco would be spending \$26,000,000 to build a plant that it really needed for only a few hours of peaking on some Thursday afternoon in December, when the company could spend \$13,000,000 and get a steam plant that would be useful twenty-four hours a day. "It is not a good investment," said the witness, closing his eyes to what Vepco could do with 275,000,000 kilowatt hours other times in the year.

Another witness brought forth some alternative plans once prepared by Army Engineers for a Roanoke Rapids dam, and noted they failed to provide a minimum 1:1 cost to benefit ratio; hence, it was urged, the markedly different plan submitted by Vepco (and approved by Army Engineers) probably was not economically feasible also, in view of the \$650,000 to \$690,000 in headwater benefit payments. Here the evidence showed positively that Vepco's design for Project 2,009 was so notable an improvement over the "alternatives" of 1944 that it would result in annual

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savings to the company of \$326,000 to \$404,000 over the cost of equivalent steam.

THEN the interveners tried something else. Roanoke Rapids was a wonderful opportunity after all. Power could be produced there for 2.90 mills, compared to 5.10 mills at Buggs Island. If the government owned both, it could charge less than cost for Buggs Island power and more than cost for Roanoke Rapids power, with the result that preferred customers would get a first-class bargain in between. This amazing testimony indicated nothing very much except that the proposed government's authority did not square with § 5 of the Flood Control Act of 1944, which limits the Secretary specifically to recovery of costs, period.

Toward the end of the proceeding, the interveners seemed to be grasping for straws. It appeared that Army Engineers in 1871 had proposed, and Congress then had authorized, a certain 5-foot channel between Palmyra and Weldon. Army Engineers had not mentioned the matter since then (and forty-five years had elapsed since the channel last had been improved in 1905), but it was suggested that requirements of *navigation* would bar the Vepco proposal. This sudden solicitude by the Secretary of the Interior for navigation rights received short shrift from Army Engineers. They characterized navigation between Palmyra and Weldon bluntly as "inactive."

Then it was submitted that Vepco could not operate the dam satisfactorily if it had to release 2,500 cubic feet a second daily over the spillway.

True, no one in authority ever had suggested that such a flow might be required, and the evidence indicated that Roanoke Rapids could generate 91,000 kilowatts even if it were required, but the interveners just thought they would bring the objection up.

ULTIMATELY, of course, the Secretary of the Interior got to the meat of the coconut. His basic contention—and it is this contention that has dismayed so many observers in their study of the Roanoke Rapids case—amounted to this: "I am instructed under the Flood Control Act to sell whatever surplus power may result from authorized dams to certain preferred customers. Sooner or later, these coöperatives and public bodies may need more power than these dams will make available to them. *Therefore, I must be prepared to supply whatever power they may require in the future.* Toward that end, it is my duty to prevent private power companies from developing sites which later might be used for public power supply."

This weird conclusion of the Secretary of the Interior, drawn from an almost incredible interpretation of the Flood Control Act, constitutes the current Washington concept of the government's obligations in the field of electric power—to *supply whatever power "preferred customers" may want, now and hereafter.* In other words, the Secretary regards it as his duty to sell not only what he has, but jealously to preserve that which he has not.

Walton Seymour, then chief of the power division of the Department of

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the Interior, summed up the interveners' dog-in-the-manger position in these words: "It seems to me that the evidence in this hearing indicates that it would be in the public interest, if we had to do it, *to refrain from having this project constructed, rather than to have it constructed by the applicant.*"

That was the position taken by REA and the Department of the Interior. They preferred to see 155,000 tons of coal consumed annually for equivalent steam generation; they preferred to see the water wasted at Roanoke Rapids; they preferred to see the region possibly handicapped for lack of power; they preferred to see tax revenues lost, economic benefits unrealized, and the dam perhaps never built at all—rather than see it built by the Virginia Electric & Power Company with its own funds.

As this is written, Vepco has won two decisions from the FPC's chief examiner. In his latest opinion, dated at Washington on November 15th, Mr. Hampton noted that the

prospect of government construction at Roanoke Rapids "appears to be even more remote and improbable now than when the decision of March, 1950, was issued." The Flood Control Act "does not charge the Secretary of the Interior with the duty or confer authority to provide means to supply all power requirements of public bodies and coöperatives," he wrote, "nor is authority found in § 5 to arrange for or provide new sources of power for new preference customer loads to be developed in the future."

These conclusions by Mr. Hampton have gone to the full membership of the Federal Power Commission. If Vepco is there sustained, it appears quite likely that the interveners, with nothing to lose but time, will carry the matter into the appellate courts. By this time next year, with luck, Vepco may be able to give a green light to its engineers and to look forward to the day when its own dam at Roanoke Rapids will be feeding power into the transmission lines of three states, and thence to the homes and industries of the upper South.

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**"TEAMWORK** is something that is accomplished not so much by the hands or even by the minds of men—it is rather an accomplishment of their souls. It is the will and desire to work together toward a common goal and it presumes that all of the human beings in the business enterprise are doing a good job in their relationships with one another. No matter what our advances in the field of technology, no matter how streamlined our organization, how efficient our administration, or how sound our judgment, we can never hope to conquer the problem of high costs, unless the human beings involved will coöperate to do so. . . . Every man must fully appreciate his own importance in the operation. He needs more than a 'sense of participation,' he must really participate."

—JOHN S. COLEMAN,  
President, Burroughs Adding  
Machine Company.



## A Waiting Audience—We, The People

For the home folks, Los Angeles gas management shot a documentary film of their big pipeline—now it is being borrowed for showing all over the nation.

By JAMES H. COLLINS\*

**S**TARTING with a movie made by its engineers, for record purposes, a gas company has run slap into "We, the People," and learned some useful things about what might well be called "people relations."

Last year, by audience reports, 369,000 persons saw the film "Westward Flow," which was made for the Southern California Gas Company and Southern Counties Gas Company, Los Angeles, during the construction of their 1,200-mile \$70,000,000 pipeline to bring natural gas from the Texas oil fields.

This was only the countable audience. There was one uncounted audience of school youngsters in the Los Angeles area that was much larger. For in Los Angeles county alone 750,000 pupils are enrolled in the public

schools of the city and other incorporated communities. The company supplied fifteen prints to city schools, for use in the visual education department, a branch of school that many of the grownups never knew, and which is growing out of all bounds, and has become of great importance in making friends for utilities.

**L**ET this be the writer's personal opinion, but somehow making friends with the public seems to take the form of an argument. The gas company is doing a good job in supplying gas, which people think of mostly when something goes wrong with the kitchen stove. To do this, it has huge investments, gigantic installations for this and that, its rates are regulated by the state, it wants to serve its customers just like a department store or mail-order house.

\* Business editor and author, Hollywood, California.

## A WAITING AUDIENCE—WE, THE PEOPLE

**B**UT sometimes, when it tries to tell people what a good company it is, somehow the issues of free enterprise get mixed in, and statistics of million cubic feet, and dollars, and the gas company as proof that we live in a wonderful country and ought to be happy.

But these Los Angeles utilities have discovered that there is an enormous nation-wide audience for films that show how gas is brought to the kitchen stove, and that very cordial relations with people start right away when they are invited to sit down and look at a picture.

More than that, if a utility company has interesting pictures, the public will seek it out, and ask for a loan of film.

Not long ago, an Australian gas executive visiting the United States saw this Texas pipe-line film "Westward Flow" at a service club lunch, and asked if it could be borrowed for showing in his country. He was astonished to learn that it was already there, available from our consular service. Twenty-five prints made for the State Department, distributed to United States embassies and consulates, are regularly circulating in foreign countries. The State Department maintains film libraries that show American life and work, and these pictures are seen by an estimated audience of a hundred million people yearly.

The first picture acquired by the Los Angeles company was one showing construction on the La Goleta underground natural gas storage reservoir, near Santa Barbara (PUBLIC UTILITIES FORTNIGHTLY, April 12, 1945, page 472). La Goleta was a

pumped-out oil field that left an enormous hole in the ground tight enough to hold gas, and gas from California oil fields is held for winter peaks. Southern Californians had a definite interest in this project, for they had passed through several cold spells before its construction. A short film put together from the engineering record footage, none of which had been made with a view to general showing, became so popular when shown to audiences around home, that when the Texas pipeline was planned, it was decided to have professional picture people do a thorough job.

**"WESTWARD FLOW"** took many months to make, with close teamwork between engineers and picture people. Dramatic episodes were earmarked for filming, and shot on schedules that permitted no retakes. For example, when the pipeline crossed a river, far out in uninhabited country, the picture crew had to be there at the right hour, and get their footage.

This film was made by Polaris Pictures, Inc., Hollywood, California (PUBLIC UTILITIES FORTNIGHTLY, October 7, 1948, page 486).

It had general interest by reason of the novelty and magnitude of such a pipeline, the mountains and desert to be crossed, and the community angles. The picture people laid out their shooting to cover four distinct subjects that rated audience interest. Some 60 per cent of the footage was devoted to actual construction operations, another 20 per cent to historic and scenic features of the country traversed, 10 per cent to explaining the need for going so far to obtain



### Films with Audience Appeal

**“DOCUMENTARY** films not so long ago were often unimaginative, dull, pictured what the sponsor wanted to put over, instead of what audiences want to see. Today, they are much better. Professional scripts and direction have given them good audience appeal. At the same time, audiences have been building for documentaries.”

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natural gas for growing southern California, and the remaining footage to the growth of population and industry and their urgent need for ample supplies of fuel gas.

This division of the subject indicates how audience interest is created in such a project. And also reflects what people want to see in documentary films.

The audience for documentaries is made up of so many different groups of people that it would be easier to describe it by listing those not included. And a very short list it would be!

**A**LL the obvious organizations regularly borrow documentaries—the service clubs want them for their lunch meetings. Parent-teacher organizations, professional and scientific societies, innumerable committees engaged in community work, every kind of gathering where serious business is

discussed, find that a good documentary rounds out the meeting.

**“WESTWARD** Flow” has been borrowed for showing in prisons. It has been borrowed by other utilities—electric light and power companies also selling gas—and notably the city-owned Los Angeles Department of Water and Power. Bond houses find it very useful to show investors.

Business concerns of every kind and size use it in many ways, for training purposes, and gatherings ranging from shop employees to directors—they use gas, or make gas appliances and equipment, and this tells a story of gas that is worth seeing.

The film has traveled to every state, and up into Canada—where, incidentally, the customs procedure makes it difficult to answer requests.

Who will ask for it next is anybody's guess, but unusual audiences

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are constantly turning up. Each particular kind of audience stimulates interest in a given field. Showing to a woman's club, for example, will bring requests from other groups of the same type.

**G**OOD documentaries make their own market. The demand for "Westward Flow" has been so strong, and widespread, that the Los Angeles gas people have never done any promotion work on its behalf. The national audience just grew, like Topsy. It was assumed that the film would be interesting to audiences in company territories, but hardly elsewhere. At every showing there are viewers who say, "That's a mighty interesting picture—I know our club would enjoy it," and the requests come in from everywhere.

A utility should appoint somebody to attend to requests, mailing out prints, and checking returns. The company librarian can add that to her duties. Experience with this film has been good. Borrowers take good care of it in projection from their own machines, and are prompt in returning it. Around Los Angeles, the companies frequently do the projecting on request, hiring projector people to do the billets, which is more convenient than having company employees do it.

What interests audiences in such films—and what does a utility company "get out" of showing them thousands of miles from its own territory?

First of all, audiences get a backstage glimpse of gas, something used every day, about which they know very little. To most persons gas means the pipes in the cellar, the meter read-

er, the monthly bill, just what is in sight. The hundreds of miles of mains, the pipelines to distant supplies, the magnitude of the plant, the number of employees at work, are new to most viewers.

Then, the Texas pipeline and La Goleta storage reservoir were very large and unusual projects, and interesting to audiences on that account. "The first word with Americans is New," as the saying goes, "and the next word is Big." Both projects were in this way American.

**C**OMMENT by viewers indicates that the huge investment needed to bring gas to the kitchen stove is also impressive. Seventy million dollars for the big pipes from Texas, which they see being laid, gives new ideas of the magnitude of the plant behind the monthly gas bill.

Gas began flowing from Texas in November, 1947. At first, volume was the planned 175,000,000 cubic feet daily, but soon it was necessary to more than double it, and a big compressor plant was built at the California border, and this to audiences is an eye opener.

It is still news to many persons that gas should be brought half the breadth of the United States, and imagination pictures it flowing into the consumer mains, and cooking dinner.

Just a moment!

On its travels the gas has picked up rust, grit, and pipe scale. Here is a spread-out plant far from the city where it is received. It has to be measured and checked. Then it gets an oil bath to remove dirt. Then a "gas" odor is imparted by "scenting" equipment. Natural gas has no such odor

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as coal gas and must be treated to give warning of leaks—a detail new to most viewers. Then big compressors boost the pressure to utilize mains to capacity. After which it is necessary to cool it down, compression having raised its temperature.

Three years ago, this 40-acre place was cow pasture. Besides the imposing array of machinery in the buildings, there are air-conditioned cottages for the employees who have to live in an uninhabited region. Imagine all that work and machinery and money just to get gas ready for the customers.

**T**HESE are the details that interest many kinds of audiences — how things are done nowadays to carry on our everyday American life.

What does a California utility get out of it?

Frankly, nothing that can be pinned down and credited even to good will. Right around Los Angeles, as well as in distant places, people watch this film, and learn something, and conclude that their gas company is very progressive. But tomorrow, over a questioned bill, they are just as ready to go to bat.

Documentary films not so long ago were often unimaginative, dull, pictured what the sponsor wanted to put over, instead of what audiences want to see.

Today, they are much better. Professional scripts and direction have given them good audience appeal. At the same time, audiences have been building for documentaries. Projecting equipment is now as much a part of any meeting place as the chairs. People are ready to sit and see a pic-

ture, if they learn something, in an industrial story even half well told.

Hollywood picture people who specialize in documentaries advise that not less than \$10,000 be invested in a 15- to 20-minute utility film. A job can be done for less money, but there is not enough to pay for good direction, actors if needed, and, most of all, a good subject.

Building a big pipeline is a subject ready-made — such a subject makes the picture.

To find a good subject for a utility in a smallish city on a modest budget, professionals study the company's plant, service, competition, and problems to uncover something that audiences will want to look at. Attention may be directed to weak points, handi-caps of public misunderstanding.

**A**TENTION will also be directed to home territory circulation, supplying prints for the public schools. Roughly, the schools will use to excellent advantage, in visual education, one print for every 25,000 population. And several prints for miscellaneous meetings will be a paying investment. In some cases they will be borrowed for projection by the borrowers, and in other cases projection can be done by the company, through arrangements with projection people.

"Why do films cost so much?" has been asked by utility executives, and at a recent association meeting, this answer was given by a documentary film man:

"They need not cost so much if you are willing to economize, and make a cheap picture. Why do utility offices cost so much? It is not strictly necessary to have marble lobbies and bronze

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grilles where customers pay their bills; plain pine-board counters would do just as well—except for the impression made. It is the same with a documentary film—what kind of impression do you want to make?"

A well-made documentary should have a life of three to five years, perhaps kept up to date by added shots of new plant or services.

"Westward Flow" took on new values as new consumer pipelines were built to supply other southern California communities. Example—the 75-mile line run into the Imperial valley, bringing Texas gas to people who had been using the bottled article. For another extension, a short-short was cut out of the 30-minute film for paid showings in Fox West coast theaters, a circulation of 900,000 among potential new customers.

It is always necessary to make prints for the public school visual education departments, about one print for each 25,000 of total population. These prints cost from \$150 to \$200 each. It might be thought that everybody would see such a film in a year or two, but the ever-changing attendance in the schools is similar in the churches, lodges, service clubs, and other organizations. A little footage shot when there is new plant or other interesting improvements keeps a documentary up to date, prolongs its life.

When the cost of a film is spread over several years, to reach yearly audiences in the tens of thousands,

and it is remembered that a good film gets from twenty to thirty minutes of undivided attention, the cost is definitely reasonable, compared with other advertising and promotional expenses.

A third film circulated by the Los Angeles companies is titled "Miracle Flame," and is partly historical, telling the story of gas from the beginning. It comes nearest to doing a direct selling job for gas, and the subject has strong audience interest.

It is likely that other films will be made by this company in future to meet the audience demand that has been discovered. While no plans have been made, one suggested subject is the amazingly diversified uses for gas, particularly in industry—this would bring in interesting phases of regional industries, such as aircraft building, oil refining, motion pictures, automotive, rubber, tire, chemical, and other major activities.

STARTING with a bald engineering record film, this company has reached the same Americans who read the daily papers, the news and picture magazines, and who make a place on their meeting programs for documentaries. They are ever more eager for news and information.

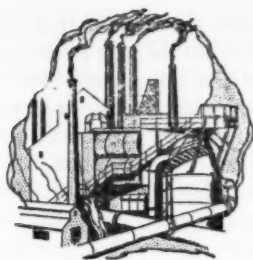
They are "We, the People."

When utilities are ready to show and tell them something interesting about the country they live in, they are organized to sit down, look, listen, and learn.

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**Q** "The future promise of American life can be promoted through intelligent discussion of what makes the wheels go round."

—Merryle S. RUKEYSER,  
Columnist.



## Steel Output and the Utilities

The recent emergency has turned a sudden spotlight upon short supplies which vital public services, including utilities, must share with the military. Steel for pipelines and power plants and other utility equipment is probably the most pressing strategic item in this category.

By T. N. SANDIFER\*

**W**ILL there be enough steel, and how much is "enough"?

To a large extent, the answer is interdependent between the steel industry on one side and the power field and its related industries. For, to an increasing degree, steel depends on power, and power, in turn, on steel.

Steel is both a heavy user, hence competitor for power, and a source of that power. It is estimated that this past year the proportion of all power used in this country and derived from petroleum and gas was probably close to 60 per cent. The latest firm figures are for 1949, when petroleum and gas furnished, together, 55.8 per cent of the total energy produced, as compared with 4.9 per cent for water pow-

er, and 39.3 per cent for coal. The point is that the gas and petroleum had to travel through steel pipe, and the steel industry has to furnish the pipe.

In 1949, the industry supplied 54,000 miles of new pipelines.

A normal year's output of steel uses over 2 billion gallons of oil and half a trillion cubic feet of natural gas. It also uses electric power, both in steel making and in the intricate installations and community layouts which comprise a steel mill.

Already Big Steel is making its plans with these things in mind. Because an ingot of steel can be rolled into sheets for pipelines, made into plates for freight cars and coal gondolas, or sheets for refrigerators, autos, and appliances, there will have to be a balance between these products.

\*Technical editor of business magazines, now resident in Washington, D. C.

## STEEL OUTPUT AND THE UTILITIES

A MILL might otherwise be getting ample power in the coming emergency period, but not have any steel on which to use the power. So there will be a division between pipe for oil and gas lines, oil-drilling equipment to find and produce the oil, wire for cable and wire for other uses, and the ingots for making finished products. The division will be made somewhat easier as time goes on, because in the next two years, with its own resources, the steel industry will add as much new capacity as was added in four years by the government building to the limit in steel facilities, and the industry also going all out, in World War II.

The steel industry, as have the utilities and power companies, has been a victim of government blowing hot and cold.

The now nearly forgotten TNEC report, just about ten years ago, was filled with charges by various Federal agency witnesses that the steel industry had overexpanded; that its bigness, its insistence on its then seemingly unneeded capacity, was a contributing factor to the depression.

Pearl Harbor, a scant two years after that report, proved how wrong this view could be, and how right were the steel industry spokesmen who had defended their expansion on the ground that it would be needed. When government soothsayers were predicting, after War II, that 8,000,000 would soon be unemployed, major steel companies launched a billion-dollar expansion. Characteristically, two months before the Korean outbreak, U. S. Steel, among others, was being accused before a congressional committee of being too big.

Now there are fears that the industry is not half big enough. By the end of 1952, however, the industry will have added nearly 10,000,000 tons, but this does not mean it will stop there.

THIS expansion program holds both promise and uncertainty for the power suppliers and their related industries on which the steel industry depends. Various steel companies are expanding their existing plants, or building new installations and facilities at such widely dispersed sites as Pittsburgh, Chicago, Birmingham, Alabama; on the Delaware river at Morrisville, Pennsylvania; on the Pacific coast; and inland points.

It is not possible to say yet that such expansion is following the lines of power development, and availability of power, or that it will complicate the power supply of any one region, for the reason that in some cases it is not yet known what type of production will follow. Electric furnace steel has been increasing since the war years, but demand for specific products may call for entirely different plans.

Also there are incidental features of this expansion—the steel industry uses 100,000,000 tons of coal annually, besides the other fuels referred to. It is reopening some coal mines that have not been used for a quarter-century, and in other cases is installing, as at Mobile, Alabama, ore transfer equipment to handle imported ores.

To turn out one ton of steel requires the handling and processing of 4.1 tons of raw materials; to increase over-all capacity by 10,000,000 tons means that provision must be made



### Who Will Get the Steel Pipe?

**"N**o hard-and-fast pattern has been drawn publicly, but, from all indications, government allocation authorities will lay down the broad pattern of steel distribution, as between civilian and military use, and again, as between 'essential civilian' and other civilian demand. Pipe for gas and oil transmission unquestionably is essential, but a government agency, as of now, will have determination of which line is more essential than another, even as to whether gas or oil should have priority."

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for hauling and handling 41,000,000 tons of material; that means more rail lines, more docks, more lake steamers, possibly 30 of the latter. To get 1,000,000 tons of added capacity it has been estimated that 4,000,000 tons of ingot steel are required for construction purposes.

**A**DDING a new steel facility is not a local project. It involves acquisition of extensive acreages, of course, and, incidentally, the finding of such acreages in a suitable location. Then buildings must be erected, furnaces installed, other equipment added. It may be necessary to build a whole new transportation system feeding the mill, and certainly new power plants, fuel lines, and other utilities provided. A new location may involve laying out of whole new towns, complete with water systems, power, and light. In

fact, this is the case with one such project.

It will be necessary in this instance to build not one, but two complete towns for the employees. Besides mining and processing equipment, a power plant will be built, and 47 miles of railroad. In addition, there will be new harbor and dock facilities.

It is not possible to give a complete picture of the expanding steel production here, but we have the industry's assurance that it is expanding, and that it is not, of itself, setting any ceiling limit on its plans. We still cannot know the answer as to whether there will be enough steel. We have the word of the industry that it is going to be tight, for an indefinite time, because nobody knows yet what our rearmament program, alone, involves.

We are starting this war period with about 19,000,000 more tons of

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steel than we had at the start of War II, and, by late 1952, this margin will be up by 29,000,000 tons. As noted, the steel industry is both a claimant and a power factor, so far as utilities are involved. As the source of the steel from which must come the pipe for transportation of gas and oil, as well as water for utility and industry use, the industry has made certain broad proposals; one of these suggests that the oil industry may want to consider pooling certain projected pipelines into a few "big inch" systems and may find it advisable to spread construction of new gas lines over a longer period of time.

**T**HE steel industry in 1950 supplied oil country goods, including supplies for oil and gas jobbers, as well as construction, at about  $2\frac{1}{4}$  times the volume of four years earlier. The oil industry has compiled a report detailing its projected steel requirements in 1951, which, some steel industry spokesmen have suggested, might need to be re-examined in the light of current steel output and demand. This is an obvious hint that all such requirements may not be met; however, the government allocation program will consider steel for barges and tank cars, as well as other needs.

In this connection, it is by no means certain that present setups for handling allocations of any industry will survive new conditions. During November, National Production Authority and the Petroleum Administration for Defense ("PAD") reached an agreement under which allocations and priorities for the domestic petroleum and gas industries would function.

Under this arrangement, PAD will be the primary point of government contact for the domestic gas and petroleum industries, as well as any other industries or industry groups, as may be designated by National Production Authority. NPA will exercise no jurisdiction over these, but will receive from PAD, the claims for materials, equipment, etc., deemed necessary. PAD's decision as to division of materials within such industries will be controlling, under this agreement.

The gas industry, thus lumped with the petroleum field, has indicated its dissatisfaction with its rôle and has asked for more direct representation, which doubtless will be approved.

**A**PART from allocation problems affecting pipe-line supplies and, collaterally, the outlook for fuel oil and gas in the localities affected by such decisions, steel expansion impinges on the metal supplies peculiarly associated with the utility industry. Tungsten is needed for special hard steels, as used for machine tools, specialized projectiles, etc.; nickel is a vital alloy in specialized steels, and for plating. There is a report that one industrial user of nickel has been buying up old Chinese coins to get their nickel content. If so, the company is one up on the Chinese, who certainly won't be getting much from Canada nowadays. Cobalt, needed for permanent magnet steels, is crucially short, so that use for all consuming industries has been drastically reduced.

Steelmakers also use aluminum, copper, lead, and zinc, and while some of these are produced in quantity domestically, it is already evident there

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will not be enough. The government is stockpiling many of these items, which complicates the situation for the ordinary industrial buyer.

Civilian users are still comparatively in a state of "guns and butter" until defense demands begin to take hold. Actual orders placed during the emergency period toward the end of 1950 were relatively insignificant. At this writing the full outlines of the 1951 program have not become apparent.

The country was beginning to overtake the postwar lag by late 1949, in refrigerators, appliances, and such goods; refrigerator output in 1949 was 19,000,000.

The steel industry has been plagued, both in the postwar period and in the earlier stages of the present war, with buying for inventory; in other words, some industry stockpiling. It has warned, in the case of pipe-line and other oil country needs, that there is no steel for such indefinite inventories now.

**O**N the face of the situation to date, the expressed views of steel industry executives and spokesmen for other industries, it is permissible to indulge in some interpolations at this point.

It is apparent that new fuel lines for gas and oil are going to be pinched for pipe. The steel industry has assured petroleum representatives that supplies will be forthcoming, but this is no longer a matter solely in the hands of the industry.

No hard-and-fast pattern has been drawn publicly, but, from all indications, government allocation authorities will lay down the broad pattern of

steel distribution, as between civilian and military use, and again, as between "essential civilian" and other civilian demand. Pipe for gas and oil transmission unquestionably is essential, but a government agency, as of now, will have determination of which line is more essential than another, even as to whether gas or oil should have priority.

Will steel expansion furnish a lever to government public power advocates? "Cheap" steel is not the factor in war that it is in the competitive peacetime markets. Some steel facilities were built in World War II under those conditions. In the postwar years, the cost factor was a deterrent to private industry in taking over these mills, though eventually they were put in private operation, at tremendous discounts on the price the government paid for their construction. No such postwar problem is likely in the present case; production was just beginning to catch up, and with a new emergency once again holding back steel from civilian manufacture, there will again be a gap which must be filled, when this war tapers off. If it does not taper off, the plants will be needed, and then some.

**I**F it is true that industry follows cheap power, the low-cost power areas are already crowded with manufacturing activities, leaving little room for the new steel facilities projected. Add the load of war orders to the current power demand, and the margin for steel use is further curtailed in such territory. The atomic energy program, and the renewed demand for such light metals as aluminum, magnesium, etc., also require power.

## STEEL OUTPUT AND THE UTILITIES

From the announced plans, steel expansion is not necessarily following the line of power expansion. It is being planned more with an eye to transportation of raw materials, movement of finished steel, and location of industrial demand. Parenthetically, the war will accelerate the huge new steel development of Cerro Bolivar in Venezuela. To get the ore, and eventually the steel from this development, will involve large inroads on the domestic U. S. supply of steel for construction, for pipelines, for rail lines,

for barges, cars, cable, and housing.

So far, the new steel plants in this country do not appear to be going up in areas where power shortages are already recognizable; that is, in the Southeast and the Pacific Northwest, where much of the public power expansion has occurred.

Steel men admit to a good many "ifs" in the present outlook; whether there will be uninterrupted expansion, uninterrupted production, and other questions, but, given their head, they intend to make the steel.

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### Tennessee Gas Films Pipe-line Progress

**PROBLEM:** *How to keep management, directors, and financial backers of a gas pipeline that stretches across 1,750 miles informed of progress and problems of their \$100,000,000 construction program this year.*

**Solution:** *A series of newsreel films.*

That is the answer of Tennessee Gas Transmission Company which last summer completed "TGT Progress Report—Issue No. 1." It shows scenes of construction activity along the pipe-line system, which begins on the King Ranch in Texas and is now being extended from northwestern Kentucky to Buffalo, New York.

"With work strung out over such a distance, it becomes difficult for our directors and others to keep abreast of developments," Gardiner Symonds, president of Tennessee Gas, said. "Consequently, we decided to bring the construction work to them via motion picture film, to supplement statistical written reports so as to provide a visual demonstration of what is happening. In this manner, they can see the step-by-step, day-to-day transformation of money, labor, and material into a larger pipe-line system."

The film follows the format of a newsreel. It is silent so that questions can be asked and comments made while the film is being shown. Each scene is accompanied by an explanatory title of the work and a map showing its location.

The film is colored 16 mm. and runs for fifteen minutes. Other films will be produced as the work progresses.

After completion of the 1950 construction program, some scenes were to be incorporated in a documentary film of the entire program.

—EXCERPT from *The Wall Street Journal*.



# Washington and the Utilities

## *New Agency Rules Priorities*

**D**IRECTOR Wilson of the Office of Defense Mobilization has moved boldly in shaking up the nation's war control agencies. Through an executive order, he has created the new Defense Production Administration to be headed by Administrator Harrison of the National Production Authority. This new DPA will be given actual authority over priorities and allocations which President Truman distributed last September among the Commerce, Interior, and other old-line agencies. The new DPA will be a prototype of the old War Production Board in World War II days, just as Wilson's own ODM will be a prototype of the old wartime Office of War Mobilization, except that Wilson will be assisted by a newly created Defense Mobilization Board—an advisory body.

For the immediate present, to avoid disrupting channels with which the public and industry have been dealing, the NPA under Commerce and the special priority divisions under the Interior Department and Interstate Commerce Commission will still continue to function, but only as arms of the new DPA. This will probably be a temporary arrangement.

Eventually, even such controls (including all Interior controls of gas and electric utilities) may be transferred to a new agency, headed by Harrison. Meantime, organization of Interior's Defense Power Administration was completed with the induction this month of Deputy C. B. McManus, president of Georgia Power Company. Mr. McManus was inducted on January 4th. Previously Bruce Brown had been named deputy in charge of oil and gas controls.

JAN. 18, 1951

## *The Old and the New*

**M**ID-JANUARY would seem to be a propitious time to assume a Janus-like rôle and "look both ways at once," viewing the 81st Congress in retrospect while looking ahead at the same time to possible future actions of the new Congress. In conning the record of the recently defunct 81st Congress, we may well find clews to legislative trends to be expected in the 82nd Congress.

Perhaps the most cherished of all administration plans to be sidetracked by the old Congress was that for a system of valley authorities similar to the TVA. Only one of a half-dozen of these proposals—the Columbia Valley Authority—ever reached the hearing stage. House and Senate Public Works committees, although provided with funds for "on the ground" hearings in the Pacific Northwest states, pigeon-holed the CVA measure at the conclusion of hearings in the nation's capital.

Sources close to both committees have privately said hearings in the Far West were abandoned at the request of the White House for the reason that overwhelming opposition to a CVA was developing in the states of Washington, Oregon, Idaho, Montana, Utah, and Nevada. Perhaps the administration felt more time was needed to "sell" the valley authority idea to the people of the Columbia river basin.

In scanning the legislators' treatment of the CVA and similar proposals, it is not treading too thin ice to predict the 82nd Congress, concerned primarily with the nation's defense mobilization efforts, will, like its predecessor, let valley or regional watershed development proposals gather dust in committee files.

## WASHINGTON AND THE UTILITIES

There can be one possible exception—the St. Lawrence seaway and power project. The tense international situation, with its stepped up demand for iron ores, may see this project get some congressional action, perhaps funds for a detailed survey and cost estimate of the project as a means of transporting Labrador ores to the Great Lakes region. Governor Thomas E. Dewey (Republican, New York) has emphasized that his state is ready, willing, and able to undertake hydroelectric developments on the St. Lawrence and Niagara rivers, and at no cost to the Federal Treasury; but that idea was rejected by the Federal Power Commission which insists that it is a job for the Federal taxpayers to finance. Congress may, in the face of such conflicting claims and the long time it would take to get the job finished, sidestep Federal power developments on these two rivers.

### *WRPC Recommendations*

THE outgoing Congress received Volume I of the 3-volume report of the President's Water Resources Policy Commission, but perfunctorily laid it aside, turning its attention to an excess profits levy and a year-end supplemental defense appropriation measure. Volumes II and III will reach the new Congress within the month.

Reported at some length in this section of the January 4th issue, the commission's 70 recommendations have raised some congressional eyebrows—some in professed admiration for farsighted social thinking, others with withering comments about "Socialism to the nth degree," or remarks of similar context.

The report reached the halls of Congress with some critical reaction assured in advance. It has been little more than a year since Leland Olds—spark plug of the commission—was rejected by the Senate for a third term as a Federal Power Commissioner, mainly because of his radical views, as expressed in his own writings.

It is probable that the House and

Senate Public Works committees will call hearings on the commission's report, but legislation in support of its voluminous recommendations is hardly likely, with so many more pressing war problems confronting the lawmakers.

### *Labor Legislation*

DESPITE continued administration opposition to the Taft-Hartley Act, the 82nd Congress, like its predecessor, will leave this statute on the books. However, some of the 21 modifying amendments offered two years ago by Senator Robert A. Taft (Republican, Ohio) stand a good chance of being adopted by both houses.

It would doubtless be denied if the suggestion were made point blank, but bigwigs of organized labor, fully aware that repeal of the Taft-Hartley Act is impossible, will "give the nod" for presidential approval of the Taft amendments. In the meanwhile, there may be some stiffening of the act to curb labor stoppages in industries vital to the defense production program.

### *REA to Have Troubles*

THE new Congress is certain to inquire closely into the super coöperative loan policies of the Rural Electrification Administration. A subcommittee of the House Committee on Expenditures in the Executive Departments has the generating-transmission loans down for careful study, especially those transactions whereby a super co-op leases its entire facilities to another Federal agency, such as the Southwestern Power Administration.

Legislation to require congressional authorization of each generating-transmission loan died in House and Senate Agriculture committees and at this moment there is some doubt it will be revived in the new Congress. However, it is recalled here that the Agriculture Subcommittee of the Senate Appropriations Committee expressed concern over the increasing number of the G-T loans, and

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suggested the full Committee on Agriculture and Forestry study the subject to determine if special legislation is needed.

In the meanwhile, REA seems to face the prospect of having to leave its Washington quarters — perhaps for some midwestern city—to make way for the mushrooming defense mobilization organization. Also, the diversion of critical materials to the needs of the military may serve to thin the rural power program activities to a virtual trickle.

### *Government Power Costs*

**D**URING the closing hours of the 81st Congress, the Senate acceded to a House demand for an appropriation of \$1,850,000 to construct a government power line—which may not be built after all, and back of which there may be a revelation necessitating an upward revision of bus bar rates for power generated at government-built dams.

The Southeastern Power Administration, new Interior Department power marketing agency, had requested funds to construct a transmission line from the Army Engineers' project at Buggs Island, Virginia, to a government aeronautical installation at Langley Field, 140 miles distant and in the same state.

The entire Virginia congressional delegation opposed the appropriation on the grounds that a private utility of the area was ready, willing, and able to make a wheeling arrangement which would be advantageous to the government.

Senator Carl Hayden, chairman of the Interior Department Subcommittee of the Senate Committee on Appropriations—which had stricken the SEPA appropriation from the House version of the supplemental defense appropriation bill—asked the Senate to restore the item rather than throw the entire \$20 billion measure into the new Congress, thus delaying much of the defense program.

Hayden said that he had assurance from the Department of Interior that the SEPA line would not be built if the department could make an advantageous

wheeling contract with the Virginia utility. He explained that "armed" with similar appropriations in Montana, Colorado, and Oklahoma, the department had been able to negotiate satisfactory contracts with private utilities in those states, and predicted the same result in Virginia.

In the meanwhile, the Virginia congressional group has served notice that it will watch with interest the sincerity of Interior's contract negotiation efforts.

An interesting high light of the Senate committee's hearings on the SEPA appropriation request was testimony of the Army Engineers building the Buggs Island project. They stated that SEPA had quoted the aeronautical installation at Langley Field a very low rate, predicated upon a 4-mill rate at the bus bar.

This rate, the Engineers said, was too low, that a 9.1-mill rate would have to prevail if the project were to be self-liquidating. Just what effect this disclosure might have is not clear, but it would seem to presage an upward revision of Interior Department's power rates to "preferential" customers of future Federal power developments.

### *Central Arizona Project*

**T**HIS \$732,000,000 multiple-purpose project, although conditionally approved by the Senate, died in the Irrigation and Reclamation Subcommittee of the House Committee on Public Lands. Before Congress for a matter of four or five years, the Central Arizona project made its greatest progress in the 81st Congress when an authorization measure was passed by the Senate.

Although facing some opposition from advocates of curtailment of nondefense expenditures, this proposal is due for early revival in the 82nd Congress. Representative John R. Murdock (Democrat, Arizona), now chairman of the full Public Lands Committee, will reintroduce the measure in the House, while Majority Leader McFarland, also an Arizona Democrat, will probably sponsor the measure in the Senate.

# Exchange Calls And Gossip



## *World Telephone "Census"*

THE number of telephones in the world climbed to a record 70,300,000 at the beginning of 1950, according to the new issue of "Telephone Statistics of the World," recently released by the American Telephone and Telegraph Company.

This is an increase of more than 4,000,000 telephones over those in service at the start of 1949.

As usual, the United States led all other countries in the number of telephones, with 40,709,398 instruments—more than all other nations combined. The United Kingdom (Great Britain) was second with 5,177,370 telephones.

The U. S. had an average of 27.1 telephones for every hundred persons. Sweden continued to hold its second place spot in telephone development with 22.8 instruments for every hundred persons. Canada was in third place both in respect to total number of telephones and relative telephone development, having 2,700,000 instruments or 19.6 per hundred persons. The world as a whole had three telephones per hundred population.

New York, with its 2,956,832 telephones at the start of 1950, outranked all other cities of the world in this respect. Only one country, the United Kingdom, had more telephones than the largest city in the U. S. Greater London was second in total telephones with 1,526,548 instruments, and Chicago was third with 1,495,900.

Washington, D. C., had more telephones in relation to its population than any other large city in the world, with 59 per hundred persons. San Francisco ranked second with 55 instruments per

hundred people, and Stockholm, Sweden, third with 47.

Not only does the U. S. have more telephones, but Americans use them more. There was an average of 355.1 telephone conversations per person completed in the U. S. during 1949. This was an increase of 13 conversations *per capita* over the preceding year.

## *REA's Telephone Loan Program*

THE telephone loan program of the Rural Electrification Administration went into the New Year at an accelerated pace. Approximately 40 per cent of the loan allocations made during 1950 were made during the last two months. A midyear appraisal of the nine-month-old program disclosed that 17 loans had been made, totaling \$3,500,000.

On November 1st when the program had reached its first-year mark, it was reported that 41 loan allocations had been made totaling "over \$12,000,000." As the year ended, it was shown that about 60 loan allocations had been made, totaling "approximately \$20,000,000."

With additional loan allocations anticipated during late December, it was estimated that the ratio of company loans to co-op loans would be about two to one—40 company loans and 20 co-op loans. However, an examination of 55 loans approved indicated a 50-50 money ratio—\$8,416,000 for companies and \$7,776,000 for co-ops. REA sources pointed out that most co-op loans went to groups forming new organizations requiring more extensive capital investments.

Thus far, the program has affected

## PUBLIC UTILITIES FORTNIGHTLY

about 65,000 telephone subscribers, approximately 41,000 of which would receive telephone service for the first time. The remaining number are to receive improved service. At the close of the year the REA had on hand or had considered 711 loan applications totaling about \$84,000,000.

### *Loyalty Oath Asked*

THE Columbia Broadcasting System announced last month it was requiring loyalty oaths from all regular radio and television employees and setting up security measures to prevent sabotage. The action was the first of its kind taken by a major network, although the National Broadcasting Company has been requiring loyalty statements from new employees.

More than 2,500 employees in eight cities are affected. The cities involved are St. Louis, New York, Los Angeles, Chicago, Minneapolis, Boston, San Francisco, and Washington.

The CBS loyalty oath is the same type as that required of applicants for Federal civil service jobs. It lists all groups noted by the United States Attorney General as subversive, and asks each employee to say whether he has been a member of a Communist, Fascist, or subversive group.

The network declined to say what action would be taken if an employee acknowledged present or past membership in a subversive organization or refused to sign the statement.

Joseph H. Ream, executive vice president of CBS, said the move was prompted by President Truman's declaration of a national emergency and "the unique nature of broadcasting."

### *Bell First to Offer Written Testimony*

WRITTEN testimony, offered for the first time in a rate case in New Jersey, was introduced into evidence recently before the state board of public

utility commissioners in the Bell telephone company's appeal for an increase of \$9,800,000 annually in its intrastate rates. The written evidence is admissible under a new rule of the commission.

Recently the commission adopted the new rule allowing utility companies to file testimony in writing instead of orally, providing it is done five days prior to the date of the hearing and also that copies are furnished to counsel for all interested parties.

Jesse B. McCullen, vice president in charge of public relations of New Jersey Bell, testified that charitable contributions of the company should be treated as an expense. He said:

If all charitable and civic requirements were taken care of through taxes there would be no question that the portion of taxes paid by the telephone company for these purposes would be legitimate operating expense both on the books of the company and for rate case matters.

Douglas M. Angelman, assistant controller of New Jersey Bell, testified on the rate of return. He said telephone rates, including the proposed changes, have increased much less than the increase in the major components of the cost of living.

Each witness was asked if his written testimony was the same as it would have been if he had taken the stand and made response to questions of counsel.

### *Phone Contact Assured*

MAINTENANCE of communications between Washington, D. C., and the rest of the country in the event of the bombing of the capital would be assured under the government's dispersal plan, a Senate subcommittee was told last month.

According to Francis P. Douglas, writing in *The Evening Star*, the committee was informed that underground telephone and teletype lines, not only would interconnect Washington and buildings at outlying sites in Maryland

## EXCHANGE CALLS AND GOSSIP

and Virginia, but also would link up the nation's communications through other cities.

While the Holland Subcommittee of the Senate Public Works Committee was holding a hearing on the \$190,000,000 dispersal plan, the House Public Works Committee voted to continue consideration of the plan and to ask for more information. The House committee said it had received information that a dispersal distance of 10 miles rather than 20 miles from downtown Washington would give adequate safety. It was said that other plans for protection against atomic bomb attack had been suggested by members.

The Regional Development Council of America sent a telegram to the subcommittee asking to be heard. The telegram said the present dispersal proposals are admirable but are only halfway measures. It added that no decentralization should be attempted without providing both housing and working space.

The testimony on the communication lines, which would be placed underground, was given by W. E. Reynolds, public buildings commissioner in the General Services Administration. Mr. Reynolds said the cost has been estimated at \$6,200,000. He said also that \$41,000,000 would be required for highway work in connection with the buildings on the eight sites.

### *FCC's Sixteenth Annual Report*

THE sixteenth year of operation of the Federal Communications Commission was highlighted by demands for radio that taxed the available spectrum space. Despite revamping of existing services and creation of new outlets, there are still not enough radio frequencies for all who want to use them.

Mounting use of low-power and other electrical devices which emit radiations that play hob with radiocommunication is another subject which is receiving mutual attention by the FCC, industry, and others involved with a view of establishing rules to minimize this type of interference.

Some of the commission's normal routine was delayed or foregone temporarily because of budgetary limitations and the press of more important problems requiring priority consideration. Throughout the year the commission cooperated with military and other government agencies, also with civil organizations and elements of industry in matters pertaining to the national defense.

On March 23, 1950, the commission proposed a new Disaster Communications Service which would enable government and nongovernment radio stations to engage in emergency communication in event of armed attack as well as during times of floods, hurricanes, earthquakes, and other disasters.

The commission's report indicates that the telephone industry reached new peaks during fiscal 1950, with over 40,000,000 telephones in service, an over-all investment of around \$10 billion, and more than \$1 billion in new facilities added during the year.

### *Restraining Order Continued*

THE temporary restraining order that prevents commercial color telecasts by Columbia Broadcasting System was continued until April 1st by a 3-judge panel in Federal district court at Chicago last month.

At the same time, the court dismissed a Radio Corporation of America request for an order overruling the Federal Communications Commission decision that gave the green light to CBS color television. The decision of the court was split, 2 to 1.

The FCC had set last November 20th for the start of commercial color telecasts, but the Federal court order had prevented CBS from starting such programs. The commission rejected RCA's color system.

The majority opinion of the Chicago court was delivered by Chief Judge J. Earl Manor of the Seventh U. S. Circuit Court of Appeals and District Judge Philip L. Sullivan.



# Financial News and Comment

By OWEN ELY

## *Natural Gas Companies Make Favorable Earnings Report*

**C**CLASS A and B natural gas companies increased their net income 31.4 per cent in the twelve months ended October 31, 1950, as contrasted with a gain of only 8.9 per cent for A and B privately owned electric utilities, according to Federal Power Commission reports. However, these results largely reflect an "evening-up" for the gas companies, which in the twelve months ended October, 1949, showed an increase of only 5.3 per cent compared with the electric utilities' gain of 15.7 per cent. The recent improvement in gas earnings represents not only more favorable weather conditions (so important in house-heating sales) but also the increasing pipe-line facilities. Thus the gas companies enjoyed a gain in revenues of 21.2 per cent in the latest twelve months' period, compared with 12.9 per cent in the earlier period.

In the month of October the gas companies made remarkable progress — a gain in revenues of 27.8 per cent and in net income of 46.4 per cent—despite a jump in Federal income taxes of 76.1 per cent. (The electric utilities made corresponding October gains of 13.3 per cent and 9.6 per cent, respectively.) However, October does not represent a "heavy" seasonal month for the gas companies so that too much importance should not be attached to these particular figures.

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**H**ow much will the natural gas companies be affected by increased income taxes? In the ten months ended October 31st they accrued \$76,200,000 for Federal income taxes at an indicated accrual rate of 41.3 per cent. If these taxes had been accrued at a 47 per cent rate (as they will be in 1951) the total would have been increased by about \$10,400,000, which would have decreased net income by about 6 per cent. While the percentage loss would be slightly larger after deducting preferred dividends (figures for which are not readily available) the effect on common stock earnings would seem to be less serious than for the electric utilities. On the other hand, it is conjectured that some natural gas companies may be more vulnerable to EPT than the electric utilities.

The natural gas industry is still growing rapidly and nearly \$1 billion has been

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## FINANCIAL NEWS AND COMMENT

allocated for construction and expansion in 1951, about the same as in 1950. Sales of gas appliances reached new high levels in 1950, but sales in 1951 seem likely to be handicapped by material allocations and other manufacturing difficulties. The industry had hoped to expand rapidly with new gas air-conditioning equipment, laundry dryers, incinerators, etc.

The outlook for industrial sales is, of course, excellent. Revolutionary discoveries have recently been made in the technique of gas combustion, which may be of great interest in the war production program. Under the AGA industrial gas research program, experiments have been developed by which gas is burned by "detonation combustion," with a rapid series of instantaneous explosions. Heat releases and temperatures may thus be attained in a given space that are said to be one hundred to two hundred times faster and greater than those possible under present combustion methods.

**E**XPERIMENTAL detonation burners, known as "Resonant Rotary Port Burners," have been built to interpret and produce these high heat releases. The ability to multiply so tremendously the amount of heat injected into the given areas of a furnace interior could have an important effect on industry, particularly when armament and military supplies must be produced faster than ever before in history. Steel could be melted in open hearth furnaces at unbelievable rates of

speed, and other heavy industrial operations similarly expedited, with almost unlimited heat possibilities to work with. This would, therefore, appear to be an outstanding development in the industrial use of gas.

### *The New EPT Law—Probable Small Effect on Utility Earnings*

**I**N its dying hours the 81st Congress managed to pass the Excess Profits Tax Bill and President Truman promptly approved it. Only a few small changes were made in the Senate version of the bill by the conferees.

The utility companies can avail themselves of three methods of calculating excess profits taxes—the older exemption methods of average earnings, or return on invested capital, and the special method set up for regulated industries allowing 6-7 per cent on book capitalization. It seems likely that most utility companies will avail themselves of the latter method, although a few may be inclined to use average earnings with the special provision for protection of growth companies (through allowance of 12 per cent on invested capital for half of 1948 and all of 1949). The "80 per cent regulated" proviso should not affect any electric utilities, but might raise questions with respect to the right of some natural gas companies to use the "6 per cent on capital" exemption.

### UTILITY SECURITIES—CURRENT "YIELD YARDSTICKS"

	Recent	1950 High	Range Low	1949 High	Range Low
U. S. Long-term Bonds—Tax-exempt .....	1.33%	1.39%	1.24%	1.82%	1.36%
—Taxable .....	2.41	2.42	2.15	2.40	2.14
Utility Bonds—Aaa .....	2.65	2.69	2.55	2.77	2.56
—Aa .....	2.72	2.74	2.63	2.84	2.64
—A .....	2.85	2.87	2.75	3.02	2.77
—Baa .....	3.21	3.21	3.14	3.45	3.15
Utility Preferred Stocks—High-grade .....	3.81	3.82	3.70	4.02	3.80
—Medium-grade .....	4.25	4.25	4.13	4.57	4.19
Utility Common Stocks .....	6.22	6.43	5.31	6.26	5.58

Latest available Moody indexes are used for utility bonds and preferred stocks; Standard & Poor's indexes for government bonds and utility common stocks.

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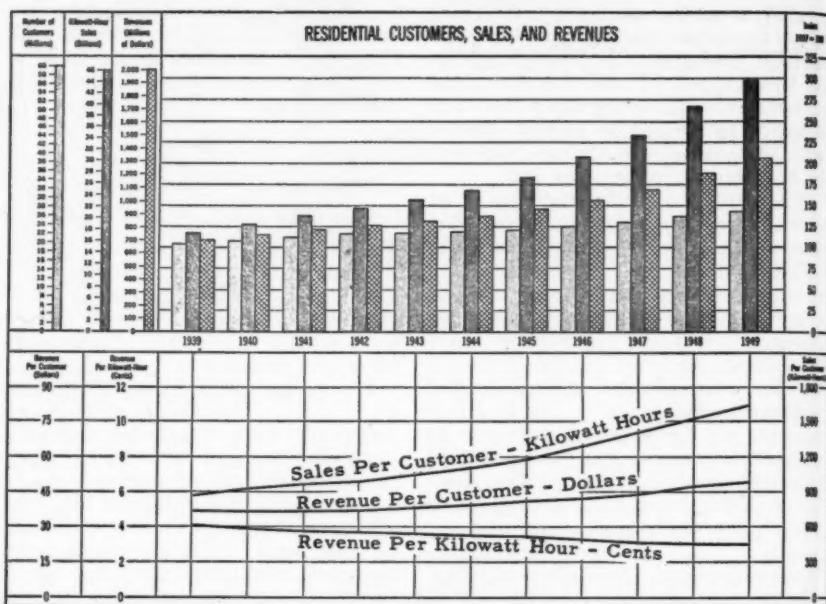
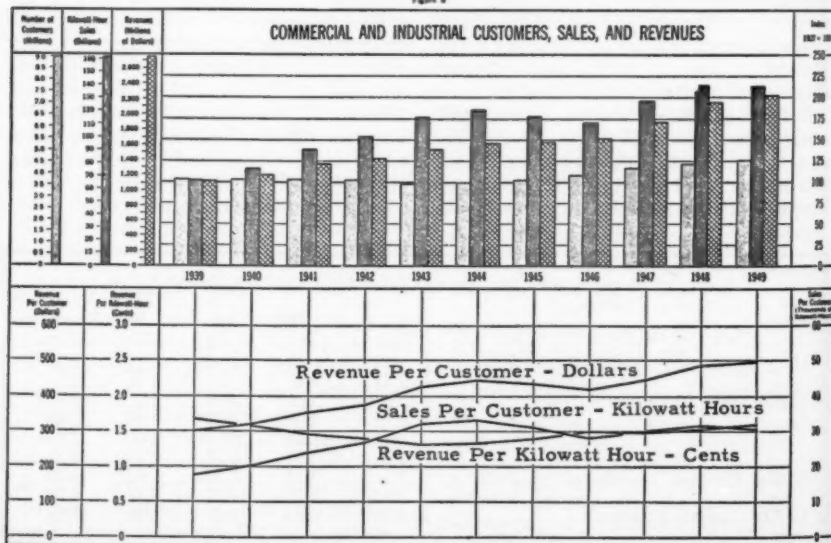


Figure 5



Federal Power Commission

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The law provides that the excess profits tax exemption may be set up by taking the sum of income taxes paid plus 6 per cent on average book capital, minus debt interest. The differences between this figure and the net taxable income would then be subject to a 30 per cent tax (the excess of 77 per cent over 47 per cent, or in the case of holding companies filing consolidated returns 79 per cent over 49 per cent). Telephone and air transport companies are allowed a 7 per cent exemption.

**D**UE to the complex character of the act, however, it seems probable that electric utilities will in effect get a larger exemption than 6 per cent on book capital. This is due in large part to the different methods of bookkeeping involved. Net taxable income will doubtless continue to be reported according to Treasury standards, with relatively high rates of depreciation accrual, 5-year amortization of plant construction when permitted, special charge-offs for refunding operations, etc. (but not the amortization of Account 100.5, which is deducted in many stockholders' reports).

Thus in most cases taxable income as based on Treasury accounting methods will probably be less than as reported to stockholders—in some cases materially lower. On the other hand the Senate, in its amendment of the House bill which was accepted by the Conference Committee, permits each utility to use its regular books of account instead of its Treasury books, in calculating common stock equity as part of the capital structure. Thus the EPT exemption will probably, in most cases, exceed the net taxable income after normal and surtaxes as reported to the Treasury, even though the company may be earning as much as 7 per cent based on published taxable income. The fact that its Treasury income is lower than the published income helps to offset the difference between 6 per cent and 7 per cent earnings on capital.

In the twelve months ended September 30, 1950, all class A and B electric utilities reported Federal income taxes of \$408,000,000. Assuming that all the re-

porting utilities had accrued taxes at the rate of 38 per cent for the first three months of this period and at 42 per cent for the last nine months, the average accrual rate would be 41 per cent. Dividing \$408,000,000 by this percentage reveals taxable income (as reported to the Treasury Department) of about \$1 billion. This figure compares with published taxable income of about \$1,170,000,000 derived from the September FPC bulletin as follows: total utility operating income of \$1,017,000,000, plus income taxes of \$408,000,000, less debt interest of \$255,000,000. Published taxable income thus exceeds the Treasury figure by nearly 17 per cent. Of course there are a number of minor factors which may partially account for the difference, but the principal reason is probably the different rate of depreciation accruals in Treasury *versus* published earnings figures.

**A**CCORDING to the composite balance sheet for A and B electric utilities published by the FPC, total capital and surplus as of December 31, 1949, was \$8.8 billion and long-term debt \$8.6 billion, making a total of \$17.4 billion. Assuming an increase about in line with the growth of plant investment of 10 per cent per annum, the midyear figure for the twelve months' period ending September 30th would have been about 2½ per cent higher, or about \$17.8 billion. Six per cent of this amount would approximate \$1,068,000,000.

In order to *pro forma* the income tax payments in the September 30th period to the new basis, the \$408,000,000 should be increased by about 15 per cent, raising the amount to \$470,000,000. This figure should be added to the 6 per cent exemption (\$1,068,000,000) and the debt interest of \$255,000,000 should then be deducted, resulting in an exemption figure of \$1,283,000,000. This compares with taxable income reported to the Treasury of about \$1 billion (above). The electric utilities as a group would thus seem to have ample exemption to avoid payment of EPT (which are made retroactive to June 30, 1950).

## PUBLIC UTILITIES FORTNIGHTLY

How much will the rise in the income tax rate to 47 per cent affect net income? It was estimated above that the increase in income taxes, based on operations for the twelve months ended September 30th, would approximate \$62,000,000. Deducting this amount from net income for that period would reduce the latter to \$746,000,000, still about one per cent larger than for the previous twelve months. However, since preferred dividend payments increased by \$9,000,000, there would be a slight decline in the balance for common stock, to around \$636,000,000. During this period common stock dividends of \$498,000,000 were paid, making the pay-out rate on the new basis 78 per cent as compared with an earlier average around 70 per cent.

The great majority of the electric utilities should be able to continue current rates of payment, although a further increase in the income tax rate to 50 per cent might naturally jeopardize some dividends.

To what extent will the utilities endeavor to recoup earnings losses by rate increases? Thus far only a few companies have made such a move—California Oregon Power, Cincinnati Gas & Electric through its new rate adjustment clauses, Southwestern Public Service in general advances to be approved by municipalities, Pacific Gas and Electric by its plea for higher gas rates to cover rising natural gas costs, Consolidated Edison in its long-pending effort to recover part or all of its 10 per cent cut in electric rates, etc. Doubtless there will be other attempts, particularly if rising costs of operation (especially higher metal prices) conspire with bigger taxes to reduce net. Whether price stabilization orders from Washington would have any legal effect on utility rates of intrastate utilities is an interesting legal question. During World War II it will be recalled that the OPA was frequently represented by counsel in rate proceedings before state commissions, in an attempt to prevent rate increases.

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### *Varying Estimates of Utility Earnings after Tax Adjustments*

WALL Street utility analysts already have begun to "push a pencil" on estimates of the impact of the new tax rates on the earnings of individual utility companies. Thus Truslow Hyde, now a partner of Josephthal & Company, issued a list dated December 20th; Standard & Poor's published one in their weekly "Outlook" of December 25th; and Walter Leason of Shields & Company issued a longer list on December 26th. However, it is obvious that unless the methods employed in making these estimates are clearly explained and analyzed, the results are difficult to interpret. Thus we get the variations in estimates of 1950 earnings as shown in the table on page 109, all apparently *pro forma*ed for tax changes.

The Josephthal figures are estimates for the calendar year, as are also Standard & Poor's results, both figures being adjusted for the 47 per cent income tax rate and 77 per cent EPT rate as approved by the Conference Committee. The Shields tabulation apparently *pro forma*s the latest interim figures for an "effective tax rate of 61½ per cent on earnings above 6 per cent return." The 61½ per cent is based on a 45 per cent tax (in the earlier House bill), plus 30 per cent of the remaining 55 per cent of income or 16½ per cent, making a total of 61½ per cent. Use of the 45 per cent rate accounts in part for the more optimistic figures in the Shields tabulation.

### *Estimates of Increased Income Taxes Added to Stock Table*

As indicated elsewhere in this department, it appears likely that most electric utilities can avoid payment of excess profits taxes under the pending bill, HR 9827. Since the EPT is retroactive to June 30, 1950, the annual reports for the calendar year 1950 (when available in the next few weeks) should reveal

## FINANCIAL NEWS AND COMMENT

the actual amount of EPT for the year 1950, divided in half. While attempts are being made by Wall Street analysts to estimate EPT, the wide variety of results obtained indicates the difficulty (and almost futility) of attempting to make hasty estimates, until the meaning of the act is clarified somewhat.

**T**HE increased burden of income taxes provided by the act is, however, much easier to estimate. For the twelve months ended September 30th, accruals should have been at the rate of 41 per cent of taxable income, as compared with 47 per cent in the new act (applicable in the calendar year 1951). This would mean an increase of roughly 15 per cent. In our table of electric stocks, beginning page 110 (compiled monthly), a new column has been added at the right showing

the approximate estimated amount of increased income taxes on a share basis (companies with revenues under \$10,000,000 are not included). These results (based in all cases on income tax accruals for the twelve months ended September 30th) may not be accurate in all cases, since some companies may not have fully adjusted their September figures to a 42 per cent rate for nine months, and others may have included miscellaneous Federal taxes (or state income taxes) in the item "Federal Taxes" or "Income Taxes." Also, the income tax figure may include nonrecurring items, or there may be occasional deductions "in lieu of taxes" which we have overlooked. In a few cases the tax figure as published in the financial services is not itemized so that an estimate is impossible.



	Josephthal	Standard & Poor's	Shields	Indicated Dividend
<i>Operating Companies:</i>				
Boston Edison .....	\$2.70	\$2.75	\$2.98	\$2.80
Carolina Power & Light .....	2.80	2.90	3.01	2.00
Columbus & So. Ohio Elec. ....	2.35	1.85	2.30	1.40
Commonwealth Edison .....	1.90	1.95	2.07	1.60
Consolidated Edison .....	2.10	2.20	2.36	2.00
Consolidated Gas (Balt.) .....	1.55	1.75	1.82	1.40
Consumers Power .....	2.60	2.45	2.51	2.00
Delaware P. & L. ....	1.50	1.62	1.87	1.20
Detroit Edison .....	1.90	1.95	2.21	1.20
Florida Power Corp. ....	1.45	1.65	1.68	1.20
Florida P. & L. ....	2.25	2.00	2.04	1.40
Gulf States Utilities .....	1.75	1.70	1.85	1.20
Houston Lighting .....	3.60	3.85	3.50	2.70
Indianapolis P. & L. ....	2.75	3.00	2.70	1.80
New York State E. & G. ....	2.00	2.25	2.36	1.70
Niagara Mohawk Power .....	1.90	1.80	2.06	1.40
Northern States Power .....	.80	.85	.96	.70
Ohio Edison .....	2.45	2.50	2.41	2.00
Pacific G. & E. ....	2.35	2.10	2.34	2.00
Pennsylvania P. & L. ....	2.35	2.30	2.82	1.60
Philadelphia Elec. ....	1.80	1.90	1.91	1.50
Potomac Elec. Power .....	.85	.81	.85	.90
Public Service of Colo. ....	1.85	2.00	2.24	1.40
Public Service E. & G. ....	2.00	1.80	1.94	1.60
Rochester G. & E. ....	2.65	2.78	2.82	2.24
South Carolina E. & G. ....	.75	.70	.78	.60
Southern Calif. Edison .....	2.75	2.40	2.61	2.00
Utah P. & L. ....	2.40	2.45	2.68	1.80
Wisconsin Elec. Power .....	1.50	1.55	1.83	1.20
<i>Holding Companies:</i>				
American Gas & Electric .....	\$4.20	\$4.60	\$4.54	\$3.00
Middle South Utilities .....	1.85	2.15	1.86	1.20
West Penn Electric .....	3.00	3.05	2.84	2.00

## PUBLIC UTILITIES FORTNIGHTLY

However, the available results seem to indicate that, on the average, the higher tax rate would absorb about 10 or 12 per cent of share earnings. This seems to agree with our conclusion reached elsewhere, that the average dividend pay-out will increase from around 70 per cent to 78 per cent, other factors

being equal. In other words, the relative dividend safety for any particular company may be gauged by raising the present pay-out percentage about ten points (making modest allowance for EPT). Of course the future effect may be somewhat less severe where a rising trend of earnings carries through into 1951.



### FINANCIAL DATA ON DIVIDEND-PAYING ELECTRIC UTILITY STOCKS

	12/28/50 Price About	Indicated Dividend Rate	Approx. Yield	-Share Cur. Period	Earnings*- % In- crease	Price- Earn. Ratio	Dividend Pay-out	Est. Incr. In Income Tax Per Share #
<b>Revenues \$50,000,000 or over</b>								
S American Gas & Elec. ....	52	\$3.00	5.8%	\$4.77o	11%	10.9	63%	\$ .46
B Boston Edison .....	41	2.80	6.8	2.98s	D1	13.8	94	—
S Central & South West ....	14	.90	6.4	1.46s	10	9.6	62	.18
S Cincinnati G.&E. ....	32	1.80	5.6	2.97s	10	10.8	61	.34
S Cleveland Elec. Illum. ....	43	2.40	5.6	3.33s	20	12.9	72	.32
S Commonwealth Edison .....	27	1.60	5.9	2.07s	1	13.0	77	.23
S Consol. Edison of N. Y. ....	30	2.00	6.7	2.36s	4	12.7	85	.32
S Consol. Gas of Balt. ....	24	1.40	5.8	1.86s	34	12.9	75	.23
S Consumers Power .....	30	2.00	6.7	2.58n	25	11.6	78	.31
S Detroit Edison .....	23	1.20	5.2	2.21n	30	10.4	54	.16
C Duke Power .....	91	4.75	5.2	7.87s	D4	11.6	60	.92
S General Pub. Util. ....	17	1.20	7.1	2.29s	22	7.4	52	.20
S Middle South Util. ....	19	1.20	6.3	1.86o	—	10.2	65	.25
S New England Elec. System	11	.80	7.3	1.30d	32	8.5	62	.12
S Niagara Mohawk Power ..	21	1.40	6.7	2.06s	16	10.2	68	.24
S North American .....	18	1.20	6.7	1.45s	3	12.4	83	.14
S Northern States Power ...	10	.70	7.0	.96s	—	10.4	73	.10
S Ohio Edison .....	30	2.00	6.7	3.05n	15	9.8	66	.35
S Pacific G.&E. ....	32	2.00	6.3	†2.34s	34	13.7	85	—
S Penn Power & Light ....	24	1.60	6.7	2.82o	39	8.5	57	.32
S Philadelphia Elec. ....	26	1.50	5.8	2.22o	29	11.7	68	.27
S Pub. Serv. E.&G. ....	21	1.60	7.6	2.13o	—	9.9	75	—
S So. Calif. Edison ....	34	2.00	5.9	2.61s	D6	13.0	77	.31
S Southern Co. ....	11	.80	7.3	1.11n	—	9.9	72	.16
O Texas Utilities .....	24	1.28	5.3	2.39n	24	10.0	54	.23
S Virginia Elec. & Power ...	20	1.20	6.0	1.85n	34	10.8	65	.16
S West Penn Elec. ....	28	2.00	7.1	3.48o	5	8.0	57	.42
S Wisconsin Elec. Power ....	18	1.20	6.7	1.86s	9	9.7	65	.25
Averages .....			6.4%			10.9		
<b>Revenues \$25-\$50,000,000</b>								
S Carolina P.&L. ....	30	\$2.00	6.7%	\$3.27n	15%	9.2	61%	\$ .34
O Central Ill. P.S. ....	15	1.20	8.0	1.62s	4	9.3	74	.19
O Connecticut L.&P. ....	14	.90	6.4	.99n	6	14.1	91	.12
S Dayton P.&L. ....	29	2.00	6.9	2.79s	19	10.4	72	—
S Florida P.&L. ....	22	1.40	6.4	2.51s	27	8.8	48	.26
S Gulf States Util. ....	21	1.20	5.7	1.85o	6	11.4	65	.15
S Houston L.&P. ....	54	2.70	5.0	4.10n	10	13.2	66	—
S Indianapolis P.&L. ....	29	1.80	6.2	3.32s	5	8.7	54	.33
S Illinois Power .....	35	2.20	6.3	2.67n	D5	13.1	82	.32
S Kansas City P.&L. ....	24	1.60	6.7	1.99n	D4	12.1	80	.24
S Long Island Lighting ....	13	1.00 Est.	7.7	1.25o	11	10.4	80	.12
S Louisville G.&E. ....	30	1.80	6.0	3.12s	3	9.6	58	.40
O New England G.&E. ....	14	1.00	7.1	1.45n	14	9.7	69	.17
O New Orleans Pub. Ser. ....	39	2.25	5.8	2.73o	1	14.3	82	.49
S N. Y. State E.&G. ....	26	1.70	6.5	2.29n	15	11.4	74	—

JAN. 18, 1951

# FINANCIAL NEWS AND COMMENT

(Continued)		12/28/50	Indicated	Approx.	Share	Earnings*	Price	Dividend	Est. Incr.
		Price	Dividend	Yield	Cur.	% In-	Earn.	Pay-out	In Income
		About	Rate		Period	crease	Ratio		Tax Per
									Share #
O	Northern Ind. P.S. ....	20	1.40	7.0	2.13n	16	9.4	66	.22
S	Oklahoma G.&E. ....	19	1.25	6.6	1.76s	11	10.8	71	.19
S	Potomac Elec. Power ....	13	.90	6.9	.85s	D14	15.3	106	.08
S	Pub. Serv. of Colo. ....	24	1.40	5.8	2.50s	5	9.6	56	.27
S	Pub. Serv. of Ind. ....	27	1.80	6.7	2.53o	2	10.7	71	.24
O	Puget Sound P.&L. ....	16	.80	5.0	1.88o	21	8.5	43	.14
S	Rochester G.&E. ....	32	2.24	7.0	2.82s	24	11.3	79	.27
S	Toledo Edison ....	10	.70	7.0	.88s	—	11.4	80	.09
O	West Penn Power ....	32	2.00	6.3	2.13s	D12	15.0	85	.27

Averages .....

6.5%

11.2

## Revenues \$10-\$25,000,000

S	Atlantic City Elec. ....	18	\$1.20	6.7%	\$1.63n	5%	11.0	74%	\$ .18
C	California Elec. Pr. ....	7	.60	8.6	.76s	—	9.2	79	.08
O	Calif. Oregon Power ....	23	1.60	7.0	2.11s	D2	10.9	76	—
O	Central Ariz. L.&P. ....	12	.80	6.7	1.14o	2	10.5	70	.14
S	Central Hudson G.&E. ....	9	.60	6.7	.73s	18	12.3	82	—
O	Central Ill. E.&G. ....	24	1.30	5.4	2.74s	25	8.8	47	.29
S	Central Ill. Light ....	32	2.20	6.9	3.04n	2	10.5	72	.36
O	Central Maine Power ....	16	1.20	7.5	1.58n	3	10.1	76	.18
S	Columbus & S. Ohio Elec. ....	19	1.40	7.4	2.30s	D11	8.3	61	—
O	Connecticut Power ....	34	2.25	6.6	2.56s	28	13.3	88	.25
S	Delaware P.&L. ....	21	1.20	5.7	1.87s	15	11.2	64	.18
S	Florida Power Corp. ....	17	1.20	7.1	1.68s	13	10.1	71	.15
C	Hartford Elec. Light ....	45	2.75	6.1	2.93s	7	15.4	94	.24
S	Idaho Power ....	36	1.80	5.0	2.81s	6	12.8	61	.32
O	Interstate Power ....	8	.60	7.5	.86s	1	9.3	70	.08
O	Iowa Electric L.&P. ....	13	.90	6.9	1.29o	D6	10.1	70	.13
O	Iowa Pub. Serv. ....	20	1.20	6.0	2.01n	D8	10.0	60	.22
S	Iowa-Illinois G.&E. ....	25	1.80	7.2	2.58o	—	9.7	70	.24
S	Iowa Power & Light ....	22	1.40	6.4	1.85s	4	11.9	76	.21
O	Kansas Gas & Elec. ....	30	2.00	6.7	3.14n	11	9.6	64	.43
S	Kansas Power & Light ....	17	1.12	6.6	1.75s	11	9.7	64	.15
O	Kentucky Utilities ....	13	1.00	7.7	1.53s	3	8.5	65	.21
S	Minnesota P.&L. ....	30	2.20	7.3	3.49n	14	8.6	63	.51
S	Montana Power ....	22	1.40	6.4	2.67n	6	8.2	52	.27
C	Mountain States Power ....	31	2.50	8.1	3.84s	1	8.1	65	.39
O	Otter Tail Power ....	18	1.50	8.3	1.77s	14	10.2	85	.17
O	Pacific P.&L. ....	13	1.10	8.5	1.59n	104	8.2	69	—
O	Portland Gen. Elec. ....	26	1.80	6.9	2.75n	42	9.5	65	.21
O	Pub. Ser. of N. H. ....	22	1.80	8.2	1.89n	D1	11.7	95	.16
O	San Diego G.&E. ....	13	.80	6.2	1.23o	54	10.6	65	.13
S	Scranton Elec. ....	13	1.00	7.7	1.29n	17	10.1	78	.12
S	So. Carolina E.&G. ....	8	.60	7.5	.81s	D30	9.9	74	.06
O	Southwestern Pub. Ser. ....	15	1.12	7.5	1.35o	12	11.1	83	.08
C	Tampa Electric ....	34	2.40	7.1	3.37o	24	10.1	71	.28
O	United Illum. ....	41	2.40	5.9	2.69d	6	15.2	84	—
S	Utah Power & Light ....	27	1.80	6.7	2.75n	20	9.8	65	.20
O	Western Mass. Cos. ....	30	2.00	6.7	2.64d	15	11.4	76	—
O	Wisconsin P.&L. ....	15	1.12	7.5	1.53s	20	9.8	73	.17

Averages .....

7.0%

10.4

## Revenues \$5-\$10,000,000

O	Arkansas Missouri Power .	13	\$1.00	7.7%	\$2.07s	16%	6.3	48%	—
O	Central Vermont P.S. ....	9	.76	8.4	.98n	34	9.2	78	—
C	Community Pub. Ser. ....	13	.90	6.9	1.30s	D4	10.0	69	—
O	El Paso Electric ....	33	2.00	6.1	3.31o	D1	10.0	60	—
S	Empire Dist. Elec. ....	17	1.24	7.3	2.22s	31	7.7	56	—
O	Gulf Public Service ....	13	.80	6.2	1.32o	D3	9.8	61	—
O	Iowa Southern Util. ....	15	1.20	8.0	1.85o	D11	8.1	65	—
O	Lawrence G.&E. ....	36	2.85	7.9	2.92d	21	12.3	98	—

# PUBLIC UTILITIES FORTNIGHTLY

(Continued)	12/28/50 Price About	Indicated Dividend Rate	Approx. Yield	-Share Cur. Period	Earnings*- % In- crease	Price- Earnings Ratio	Dividend Pay-out	Est. Incr. In Income Tax Per Share #
O Lynn G.&E. ....	32	2.00	6.3	1.94d	D3	16.5	103	—
O Madison Gas & Elec. ....	29	1.60	5.5	1.89d	15	15.3	85	—
O Northwestern P.S. ....	9	.80	8.9	1.30s	21	6.9	62	—
C Penn Water & Power ....	35	2.00	5.7	2.12d	D56	16.5	94	—
O Pub. Ser. of N. Mex. ....	15	1.00	6.7	1.53s	D2	9.8	65	—
O Rockland L.&P. ....	9	.60	6.7	.69s	8	13.0	87	—
S St. Joseph Light & Power .	21	1.50	7.1	1.93s	—	10.9	78	—
S Southern Ind. G.&E. ....	20	1.50	7.5	2.13n	D2	9.4	70	—
O Tide Water Power ....	8	.60	7.5	1.17n	17	6.8	51	—
O Tucson Gas, E.L.&P. ....	20	1.40	7.0	2.16s	D8	9.3	62	—
O Western Lt. & Tel. ....	21	2.00	9.5	2.01s	D14	10.4	100	—
Averages .....			7.2%			10.4		

## Revenues under \$5,000,000

O Arizona Edison ....	16	\$1.20	7.5%	\$1.88s	D20%	8.5	64%	—
O Bangor Hydro Elec. ....	27	1.60	5.9	2.67s	18	10.1	60	—
O Beverly G.&E. ....	44	2.75	6.3	3.16d	50	13.9	87	—
O Black Hills P.&L. ....	16	1.28	8.0	2.07o	27	7.7	62	—
O Calif. Pacific Util. ....	35	2.40	6.9	4.85o	67	7.2	49	—
O Central Louisiana Elec. ...	29	1.80	6.2	3.58s	3	8.1	50	—
O Citizens Utilities ....	15	.80&Stk.5.3		1.99je	6	7.6	40	—
O Colorado Central Power ...	29	1.80	6.2	2.68je	26	10.8	67	—
O Concord Electric ....	35	2.40	6.9	2.57d	18	13.6	93	—
O Derby G.&E. ....	21	1.40	6.7	1.92d	61	10.9	73	—
O Eastern Kansas Utils. ....	11	.60	5.5	1.00ju	—	11.0	60	—
O Fitchburg G.&E. ....	47	3.00	6.4	2.78d	4	16.9	108	—
O Frontier Power ....	4	.40	10.0	.84d	D26	4.8	48	—
O Haverhill Elec. ....	35	3.00	8.6	2.80d	155	12.5	107	—
O Lake Superior Dist. Pr. ...	24	1.80	7.5	3.78s	37	6.3	48	—
O Lowell Elec. Lt. ....	44	3.55	8.1	3.35d	42	13.1	101	—
C Maine Public Service ....	13	1.00	7.7	1.63o	8	8.0	61	—
O Michigan Gas & Elec. ....	21	1.60	7.6	2.13s	—	9.9	75	—
O Missouri Edison ....	10	.70	7.0	1.46s	60	6.8	48	—
C Missouri Public Ser. ....	38	2.60	6.8	4.40d	12	8.6	55	—
O Missouri Utilities ....	14	1.00	7.1	1.45s	D12	9.7	69	—
O Newport Electric ....	27	1.80	6.7	2.85o	D2	9.5	63	—
O Sierra Pacific Power ....	21	1.60	7.6	1.96o	8	10.7	82	—
O Southern Colo. Pr. ....	9	.70	7.8	.86ag	D9	10.5	81	—
O Southwestern El. Ser. ....	11	.80	7.3	1.38my	1	8.0	58	—
O Upper Peninsula Power ...	13	1.20	9.2	1.51s	12	8.6	79	—
Averages .....			7.2%			9.7		
Averages, five groups ...			6.8%			10.5		

## Canadian Companies\*\*

C Brazilian Trac. L.&P. ....	22	\$2.00	9.1%	\$3.85d	4%	5.7	52%	—
C Gatineau Power ....	18	1.20	6.7	1.43d	13	12.6	84	—
C Quebec Power ....	19	1.00	5.3	1.14d	D6	16.7	88	—
C Shawinigan Power ....	32	1.45	4.5	1.43d	D9	22.4	84	—
C Winnipeg Electric ....	37	1.50	4.1	2.53d	40	14.6	59	—

d—December, 1949. my—May, 1950. je—June. ju—July. ag—August. s—September. o—October. n—November. B—Boston Exchange. C—Curb Exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. Est—Estimated. \*All twelve months' earnings comparisons have been adjusted to reflect in both periods the present number of shares outstanding. If additional common shares have been recently offered, earnings are adjusted to give effect to the offering. \*\*While these stocks are listed on the Curb, Canadian prices are used. (Curb prices are affected by exchange rates, etc.) †Does not fully reflect \$4,000,000 gas rate increase effective November 28, 1949, or electric rate increase of \$8,800,000 granted in 1950. Earnings on average shares outstanding, \$2.56; price-earnings ratio on this basis 12.5 and dividend pay-out 78 per cent. #See explanation in text.



# What Others Think



## Gas Industry Review

**A** COMPREHENSIVE review of the activities and accomplishments of the gas industry has recently been released by D. A. Hulcy, president, American Gas Association, and president, Lone Star Gas Company, Dallas, Texas.

Hulcy notes that each year since the end of World War II, the gas industry has registered substantial gains in customers served, in volume of utility gas sold, and in the amount of capital invested in plant and facilities. He also states that the industry has grown from a \$5 billion industry to an \$8,750,000,000 industry at the end of 1950.

The gas industry executive points out that this spectacular growth was particularly emphasized in 1950 when the gas industry achieved new records in numbers of customers served, in total volume of sales of utility gas, and in number of gas appliances shipped. He also adds that capital expenditures for construction and plant expansion reached a new high level during the past year and that the transmission and distribution systems of the gas industry today measure more than 375,000 miles, a record mileage for any of the nation's transportation systems.

Hulcy states that uncertainties in both world and national outlooks make it difficult to forecast the future. The gas industry still has allocated, in its long-range program, nearly a billion dollars for its construction and expansion in 1951. If peace prevails there is every reason to believe the gas industry will enjoy a successful year in 1951. At the same time, the industry stands ready to do its full share in helping our nation meet any emergency that may arise.

The AGA president then points out some of the important statistics showing the industry's accomplishments. At the end of 1950 the gas utilities were

serving approximately 24,362,000 customers, including about 331,000 customers receiving LP-gas directly from utility gas mains. This was a gain of 3.3 per cent over 1949 when there were 23,580,000 customers on gas utility mains.

Of the total number of customers served, 14,894,000 were receiving natural gas, a gain of 12.7 per cent over the previous year. Manufactured gas customers declined about 14.8 per cent during the year to total about 7,197,000 at the end of the year; while mixed gas customers on December 31, 1950, totaled an estimated 1,940,000, a gain of 24.8 per cent over 1949. The decline in the manufactured branch of the industry reflects the effect of the changeover by several large gas utility companies to the distribution of straight natural gas or to mixed gas distribution during the year.

**H**ULCY also points out that in volume of gas consumed the total sales of about 4,266,000,000 mcf represented a 15.8 per cent gain over 1949. Utility sales of natural gas were about 3,694,000,000 mcf, a gain of 18.9 per cent; manufactured gas sales dropped to 412,000,000 mcf, a decline of 2.7 per cent, and mixed gas sales were about 159,600,000 mcf, a rise of 14.4 per cent over the previous year.

The gas leader likewise reviews the revenue gains of the industry which also reflect gains over the previous year. Revenues from the sale of gas reached an all-time record, almost to the \$2 billion mark. Utility revenues for the year were \$1,958,000,000, a gain of 16 per cent over 1949. Natural gas revenues staged a spectacular rise of 25 per cent to total about \$1,363,000,000 for the year. Manufactured gas revenues were \$458,700,000, a decline of 4.3 per cent under 1949,

## PUBLIC UTILITIES FORTNIGHTLY

and revenues from sales of mixed gas were \$114,600,000, a gain of 18.8 per cent over the previous year. The balance in revenues is accounted for by revenues from sales of LP-gas through utility mains.

Hulcy then notes that record gains were also made in the sales of gas appliances. This was reflected in the records of sales for gas ranges, gas water heaters, central heating units, gas refrigerators, and gas air-conditioning units.

**T**HE gas company executive traces the expansion program of the industry during the past year. A total of approximately \$1,060,000,000 was spent in expanding the production, transmission, and distribution facilities to meet the constantly growing demand for gas. Of this total amount it is estimated that more than \$954,000,000 was spent on the construction and expansion of natural gas pipe-line systems, with manufactured gas companies spending approximately \$90,000,000 and mixed gas companies investing nearly \$15,000,000 for new plant and expansion of present facilities.

As to future industry expansion, Hulcy discloses the results of a resurvey of the situation as made by the American Gas Association. It is estimated that about \$3,154,000,000 would be spent in the 5-year period 1950-1954, with approximately \$2.75 billion of this amount being devoted to the construction and expansion of natural gas facilities. While it is believed that 1950 will be the peak year of this program, it is estimated that more than \$875,000,000 will be spent on gas industry expansion next year if no restrictions are placed on vital materials.

The AGA president then reviews some of the accomplishments of the most important phase of the industry's activities—natural gas transmission. Natural gas pipe-line systems added record mileage, customers, sales, and revenues, with natural gas supplying a record-breaking total of 20 per cent of the total energy consumed in the United States during 1950.

He points out that during the first nine months of 1950, the Federal Power Com-

mission had approved construction of 5,750 miles of new natural gas transmission lines and had applications pending for an additional 12,400 miles. Construction of the approved lines will bring total mileage of the nation's natural gas transmission lines to more than 265,000 miles.

**H**ULCY then outlines some of the more important gas transmission line applications and connections for service to the nation's more populated sections. The Transcontinental Gas Pipe Line Company scheduled delivery of natural gas to New York city, Brooklyn, and Newark for the end of December, 1950. This 1,900-mile line, the longest in the world, brings natural gas from the Gulf coast to metropolitan New York and its cost was about \$200,000,000.

The Federal Power Commission in November approved the application of Northeastern Gas Transmission Company, Boston, to supply part of New England with natural gas. This company will serve markets in Massachusetts, Connecticut, and New Hampshire.

The Algonquin Gas Transmission Company, also of Boston, is expected to receive authorization to serve New England as soon as it has shown the Federal Power Commission that it has an adequate supply of gas. Natural gas is expected to reach the New England states before the end of 1951. Only one important area in the United States will then be without natural gas, and several plans are under consideration for bringing gas to the Pacific Northwest. These plans include applications to bring gas to Oregon and Washington from the Texas fields as well as from the Canadian sources of supply.

The gas industry executive touches on the all-important question of natural gas supply when he says that reserves continue to appear ample to serve the nation for many years to come, even with rapidly increasing production of natural gas. The association's committee on natural gas reserves estimated at the beginning of 1950 that proved reserves of natural gas totaled 180.3 trillion feet, an increase of 6.5 trillion feet over proved reserves

## WHAT OTHERS THINK



"IF THESE DON'T SATISFY YOU, I CAN SHOW YOU SOMETHING THAT DOESN'T USE GAS, ELECTRICITY, COAL, OR OIL"

at the beginning of 1949. Natural gas production during 1949 was estimated at 5.9 trillion cubic feet so new discoveries and extensions of estimates of known fields continue to exceed the yearly production.

**H**ULCY then turns to the field of manufactured gas. He notes that despite the tremendous growth of natural gas transmission systems, the manufactured gas branch of the industry continues to be of the utmost importance in the nation's economic picture. Demand for gas service continues to exceed the ability of the industry to serve this demand in many areas. This is particularly true as regards house heating and its attendant peak-load problems.

While some of the territories receiving or about to receive natural gas will change over to straight natural gas distribution, there are many companies that will continue to manufacture gas and will use

natural gas only as one of the productive materials. Other companies will mix manufactured and natural gas to be served, perhaps at higher BTU level, but still rely heavily on the manufactured gas plants.

The gas industry leader then outlined some of the major activities of the American Gas Association. In the field of research, for example, 1950 marked the twenty-fifth anniversary of the AGA Laboratories and of the founding of the Laboratories Approval Plan for the certification of gas appliances. Establishing a new peak in total services to the industry for the fourth successive year, the gross volume of all operations passed the million-dollar mark. He added that appliance testing and inspection services, the major activities, exceeded those of 1949 by about 20 per cent. A total of over 4,400 individual appliances were tested at the laboratories and more than 1,100 inspection calls on manufacturers resulted in examination of more than 5,000 basic

## PUBLIC UTILITIES FORTNIGHTLY

models. These figures included United States and Canadian testing and inspection services.

**H**ULCY states that ground was broken last year for the construction of a large addition to the Cleveland laboratories. This action, following a similar expansion at the Pacific coast branch, a year earlier, will place the laboratories in a position to handle more efficiently the heavy volume of services they are called upon to provide.

He then goes on to highlight the activities of the various committees within the AGA. The residential gas section participated in promotions such as the "Spring Style Show" and the "Old Stove Roundup" receiving excellent support from both gas utility companies and gas appliance manufacturers.

He also states that the home service departments of gas utility companies in the United States and Canada last year increased personnel by 20 per cent to total 1,400 women, who made nearly 10,000,000 customer contacts last year. This contact work included calls in the home on equipment care and use, demonstrations of gas equipment in company and outside auditoriums, and the answering of approximately 600,000 telephone calls.

Representatives in the home service departments of gas utilities last year co-operated with the American Standards Association in the promotion of baking utensils meeting ASA standards. Sets of these standard utensils, made in uniform sizes, have been offered to the gas industry through the AGA Promotion Bureau and now are being used by home service representatives in gas range demonstrations.

In the field of industrial and commercial gas consumption promotion, Hulcy points out that world conditions caused the postponement of some of the promotional activities planned for the final quarter of the year, particularly with commercial gas cooking.

The AGA head states that the industry's first National Conference on Safety was sponsored by the Accident Preven-

tion Committee in Washington, D. C., last year with about two hundred safety executives in attendance. Certificates of award for reductions in frequency and severity rates were presented to companies which had reduced these rates 25 per cent or more. The committee has carried on an active program of poster preparation, foremen's messages, and other means of recommending safety procedures.

**O**THER research accomplishments pertaining to the use of natural gas occurred during the year. Hulcy brings out that the availability in increasing quantities of natural gas in the eastern seaboard area and other manufactured gas areas faced some of the companies with the problems of expanding interim gas supplies and peak shaving and emergency supply. Considerable attention has been devoted to these problems under the gas production research program. One new project initiated in this group is directed at "interchangeability of oil gas and natural gas." Utilization research was concentrated on projects covering characteristics of applying heat in gas appliances. Venting, ignition, and combustion are three of the major characteristics being studied in some of the twenty utilization research projects being conducted. Many bulletins and reports covering important phases of gas production, technical and utilization research studies were distributed during the year.

Hulcy concludes that there are many factors that point to a continuation in 1951 of the record-breaking achievements of 1950. Except for a few areas, the gas supply problem is rapidly being solved with the growth of the natural gas system and the technical advances in manufactured and mixed gas plants that are helping to meet peak loads.

He continues that rising costs of producing, transmitting, and distributing gas indicate some further rate adjustments may be necessary, particularly if the tax burden of the gas utilities is increased heavily. He adds that shortages of materials, resulting from a heavy conversion to war production, might neces-

## WHAT OTHERS THINK

sitate delays in construction and expansion programs as well as limiting supplies

of appliances—all matters mostly beyond the control of the gas industry.

### WRPC on FPC Hydro Licenses

**A**MONG the many questions discussed by the President's Water Resources Policy Commission in Volume I of the expansive report recently released is the subject of "Whether and to what extent Federal Power Commission licenses should be issued for the private development of hydroelectric sites which would otherwise be integral parts of Federal comprehensive multiple-purpose river basin programs."

The commission states that in discussing this question, three points must be noted immediately:

1. Licenses will, in general, be sought only for sites or projects which offer relatively low-cost power, leaving the higher-cost developments to the government. This is so, if for no other reason, because higher interest rates to private borrowers reduce the range of water-power resources susceptible of development.

2. Licenses will ordinarily be sought for sites or projects benefited or in many instances made possible by Federal conservation storage regulating reservoirs constructed at Federal expense as parts of the flood-control program.

3. Without such projects, the effectiveness of an interconnected Federal power program in the region might be impaired to the point where it would cause little, if any, change in private marketing and rate policies.

The commission then paraphrases the problem involved by comparing it to the question of whether privately managed utilities should be allowed to buy power at a Federal bus bar or whether the Federal government should be allowed to build transmission lines to deliver this power to public and cooperative distributors on a preferential basis.

The report next covers the instances where the applications of private companies to develop the Clark Hill project on the Savannah river and the Bull Shoals site on the White river in Arkansas were denied by the Federal Power Commission "because Congress had already appropriated funds for (Federal) construction."

The commission also notes that the Pacific Gas and Electric Company has applied for a license for development of the North Fork of the Kings river in California. The commission adds that similarly, the Virginia Electric & Power Company has applied for a license to develop the Roanoke Rapids site on the Roanoke river in North Carolina. These applications are still awaiting final action by the Federal Power Commission.

**T**HE commission comments that a review of the private applications for licenses now pending before the Federal Power Commission suggests the importance of the issue. The report continues that developments totaling 2,492,750 kilowatts would be authorized if such applications were granted. It continues that eliminating one for the St. Lawrence development, totaling 940,000, approximately two-thirds of the remainder, or 1,005,000 out of 1,552,000, would be in projects in conflict with one or another of the comprehensive Federal programs. The report then observes:

Issuance of such licenses to private power interests would have far-reaching effects upon Federal water resources programs, and more especially upon power policy, an important factor in such programs. Power values created by Federal investment in multiple-purpose programs would be utilized for private profit, instead of bringing about reductions in electric rates and expanded use of electricity.

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THE commission goes on to say that there should be some link between Federal responsibility for power development in connection with basin programs and authority to license private developments on the same streams. It refers to

a link which no longer prevails; namely, the situation in the early days of the Federal Power Commission when the Secretaries of War and Interior were members of the Federal Power Commission.

### Comments on Britain's Nationalized Industries

THE "Observer" comments on a variety of subjects in a column entitled *Men and Matters*. The column appears in the *London Observer*. Recently, affairs in the nationalized industries of Great Britain were among some of the matters discussed. The "Observer" stated:

These days Mr. Herbert Morrison, who is the Minister in charge of the Festival of Britain, seems to live in a permanent state of carnival. Recently, he had the hardihood to declare that "already in the nationalized industries, we have set up statutory consumers' councils which enable the consumer to put forward suggestions and take an active part in formulating the policy of the board." Was there ever a statement so ridiculous? Most consumers' councils are about as effective as a mesmerized rabbit.

The column continued:

Mr. Morrison asserted in the same speech that the Socialist party "would not hesitate to set up public enterprises which by the force of competition and example will encourage private enterprise to greater efficiency." Truly Mr. Morrison is dwelling in Wonderland. Does he propose to supply the Lord Hyndleys of the world with large sums of public money with which to start businesses against Woolworths or Rolls-Royce? At the present time, the railways are losing huge sums of money; the coal industry will probably be losing money again before long; the losses on civil aviation are formidable, and even in a business which one might suppose that even the nationalizers could not spoil, cable and wireless,

profits have been significantly dropping. A fine example these nationalized industries set to private enterprise!

FURTHER on in the column, other phases of life in Socialist Britain are discussed. The "Observer" commented:

Hundreds of thousands of people are seeking places to live. But the government spends huge sums on building concrete skyscrapers for bureaucrats. An angular pile has now been erected behind the Banqueting House, thereby dwarfing the noblest building in Whitehall.

It must be infuriating for families crowded into one or two rooms to read about the structures being put up for the Festival of Britain. The government has announced that most of these erections will be pulled down after the event. What prodigality!

The column then went on to deal with the possibility of a winter coal shortage:

Socialist Ministers have admitted that we may again be faced with a fuel crisis in the depths of winter and that many dollars will have to be spent on importing American coal. The full consequences of the nationalization of steel to small investors are gradually being brought home to them. They are being robbed. A great business like Dorman Long's will be taken over by the state for next to nothing. Our Socialist rulers have as much respect for the small investor as Stalin had for the kulaks.

The cost of living mounts steadily, as a result of the government's devaluation policy and its fantastic extravagance. Surely the only happiness the

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country can look forward to in the New Year is to get rid of this administration of bunglers and spenders.

IN another part of the column it is suggested that the British Council, which publicizes the "British Way of Life,"

might well describe the citizens of Great Britain as "the meekest people on earth." It then went on to refer to the meager ration of "bully beef and a little aged flesh" which was to be "John Bull's Christmas fare."

—D. T. B.

## Comparison of Public and Private Rate Increases

AN interesting comparison between the rate-making problems of a municipal utility and those of a privately managed utility operating in the same city was raised recently by the *Pittsburgh Press* (Scripps-Howard) in an editorial comment. The Duquesne Light Company has been seeking a rate increase and the city of Pittsburgh has been objecting. Meanwhile, the city of Pittsburgh—also in the utility business—has raised its water rates. The question apparently was raised: How does a city object to rate increases and at the same time put up its own rates? The editorial goes on:

Now for the contrasts:

Duquesne Light wants to up its rates 16.3 per cent for the average consumer.

The city of Pittsburgh wanted to—and did—raise its rates 68 per cent.

The Pittsburgh Railways Company, which has been pretty constantly embroiled with the city in recent rate fights, thus far has in this postwar inflation raised its rates three times, for a total of 50 per cent.

*(Another fare increase is coming, because of a new wage raise for 3,500 employees.)*

These two private utilities, it will be noted, have taken less of a bite than the publicly operated utility. And the one that took three bites still didn't get up to 68 per cent.

A still more interesting contrast is in the way these rate increases were put into effect.

Duquesne Light thus far has waited nearly eleven months for the rate increase to which it says it is entitled.

The public utility commission postponed it twice. And the city may go to court to stop it, even if the PUC approves

The Pittsburgh Railways Company has been shuttling back and forth between the PUC and the superior court to get its rate increases. Its finances—no secret, since the company has been in bankruptcy twelve years—have been combed over pretty thoroughly in each rate case.

But the city of Pittsburgh wanted higher rates, so it simply put them into effect.

No PUC hearings, as far as the city is concerned. No lengthy rate case. No appraisal of how much the waterworks is worth and what the customers should pay in fair rates. The city needed the money to fill out its 1951 budget. So it simply raised the water rates, instead of the taxes.

THE *Press* editorial concludes that it is the duty of every public utility to maintain its properties in such a way as to give proper service to the public. It pointed to the excellent electric light service in Pittsburgh and the modern transit equipment available on the Pittsburgh Railways. With this it contrasts poor service sometimes received from the water system. While not opposing all objection to utility rate increases, the editorial suggested that the privately operated utilities, including the bankrupt one, seem to have a better record to date, both as to service and rate increases, than the one publicly operated utility in Pittsburgh.



# The March of Events

## In General

### TVA Makes Annual Report

THE Tennessee valley region is stronger today, more capable of meeting either demands of national defense or peacetime economic development, than it was at the beginning of World War II, the Tennessee Valley Authority said in its seventeenth annual report to the President and Congress, released earlier this month.

This increased regional strength springs not only from the TVA's physical plant, but also from the greater strength and activity of state and local agencies through which the people of the valley carry on their share of the comprehensive development of natural resources, TVA said.

Noting that capacity of its power system has been multiplied nearly four times since 1940, TVA declared the region is still far short of the power necessary to meet the rapidly expanding needs for national defense.

Construction schedule of the huge public power agency, according to the report, is designed to increase the power system's installed capacity from 3,000,000 kilowatts at the end of the 1950 fiscal year to 4,900,000 kilowatts by 1953.

After a lengthy review of flood-control activities, navigational operations, soil conservation, etc., the report summarized electric power operations as follows: The power system produced more than 17.5 billion kilowatt hours of electricity, considerably more than any other integrated system in the country. Power operating revenues were \$58,800,000, and net operating revenues were \$27,000,000, amounting to a return of about

5.75 per cent on the average depreciated power investment. Over the entire period of TVA operations, the return has averaged 4 per cent annually. The report stated:

Since 1933, TVA power operations have produced total operating revenues of \$426,000,000. Of this amount, \$177,000,000 was used for operating expenses such as wages, coal, and maintenance materials, payments in lieu of taxes (\$21,000,000), and interest payments (\$7,000,000). Depreciation charges of \$93,000,000 were made against power operations.

Funds equal to the depreciation charges were used to replace old power facilities, or provide new facilities, or were held in the form of cash, receivables, and inventories.

Of the remaining \$156,000,000, representing net income, \$111,000,000 has been reinvested in the power system, making it unnecessary for Congress to advance that amount from the Treasury. Some \$45,000,000 has been paid to the U. S. Treasury, directly or through the Reconstruction Finance Corporation, to retire bonds or to repay appropriations.

Ninety-five municipal and 50 coöperative systems distributed over 6.5 billion kilowatt hours to about 1,100,000 ultimate consumers. During the fiscal year, the number of consumers was increased by 110,000, of which 63,000 were farms. Farm electrification has advanced to 82 per cent of the total farms of the valley region. Farm use of electricity, taking into consideration both increased number of farms and increased use per farm,

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was 75 times as great in the fiscal year 1950 as in 1933, the year TVA was created.

The report noted that "Contrary to the widely disseminated notion that efficient management in the electric business is the exclusive attribute of private ownership, the publicly owned and locally managed distribution systems [REA-financed coöperatives and municipal] in the valley show costs of service averaging somewhat lower than those of the entire electric utility industry, whether or not the cost of wholesale power is included."

### TVA Payroll Upped \$3,000,000

THE annual payroll of the Tennessee Valley Authority was hiked approximately \$3,000,000 on January 7th when some 8,800 TVA employees in construction, operating, and maintenance divisions received pay raises. George F. Gant, TVA's general manager, said the raises had been approved by the authority's board of directors.

The increases apply to nearly all employees covered by "trades and labor" wage schedules, Gant said, adding that they reflect increases in prevailing rates for similar work in private industry in the TVA area during the past year.

The wage raises are the outcome of the sixteenth annual wage conference of TVA and Tennessee Valley Trades and Labor Council, representing 15 American Federation of Labor unions. TVA did not release a breakdown of scales in various job classifications.

### Rural Power Consumption Jumps

CONSUMERS of Rural Electrification Administration-financed coöperatives used 25 per cent more power in 1950 than in 1949, according to a recently published REA report. These consumers, the report continued, are harnessing electric power on an unprecedented scale, using in 1950 a total of 7.8 billion kilowatt hours, a gain of 1,573,000,000 over 1949's 6,227,471,179 kilowatt hours. This increase was substantially greater

than the entire amount of power distributed by REA borrowers in the first year of World War II.

This record-breaking demand for electrical energy on the rural systems, according to REA, is the result of (1) the rapid increase in the past decade of the number of consumers served, and (2) the spectacular increase in the use of electricity by each rural consumer, nearly 380,000 of whom were added to REA-financed systems during 1950. The total number of rural consumers is now 3,420,000, according to REA.

During the year just ended, an average of about 1,462 new consumers were connected to REA-financed coöperatives and 568 miles of line placed in service each working day of the year, the report stated.

The increase in power consumption per consumer is indicated by a study REA made of a group of users who had received service for ten years. These users, who live in 13 different sections of the country, made a fivefold increase on the average in their power consumption during the decade.

REA stated that increased rural electric requirements are being met in two ways. Greater quantities of electricity are being purchased from wholesale suppliers of electricity. In 1950 REA borrowers purchased \$79,000,000 worth of electricity, an increase of \$12,000,000 over 1949. Also, in 1950, REA borrowers obtained loans for the construction of generating capacity capable of supplying over 400,000,000 kilowatt hours a year. Because the increase in demand is so rapid, however, even expanded existing facilities for supplying it are strained, REA said, adding that the problem of obtaining power for REA-financed systems to distribute is the most difficult and most important now facing the program.

As of the end of 1950, REA also reported:

Electrification loans approved during the year amounted to more than \$300,000,000, bringing the cumulative total to more than \$2.3 billion. A little more than one-fourth of the loans dur-

## PUBLIC UTILITIES FORTNIGHTLY

ing the year were for generating plants and transmission lines which combined have accounted for about 17.5 per cent of the cumulative total of loans.

The REA borrowers have 1,007 power systems in service, 12 more than a year ago, operating 1,091,000 miles of line providing electric service to 3,420,000 consumers. In addition, 96 borrowers had generating plants in service, totaling 396,000 kilowatts capacity.

Debt service on the REA loans continued ahead of schedule. Funds advanced to borrowers total \$1,706,500,000; debt service payments—of interest and principal—reached \$266,500,000 by the year end. Although \$775,000 is thirty days or more in arrears, advance payments of principal total \$26,000,000. Arrearages amount to three-tenths of one per cent of the amount due, while advance payments are over 10 per cent.

### Davidson, CVA Advocate, Resigns

THE resignation of C. Girard Davidson, Assistant Secretary of Interior, removes from the Washington scene one of the staunchest supporters of the Columbia Valley Administration proposal.

Davidson, a resident of Portland, Oregon, stated he would enter law practice in that city shortly after January 1st. Secretary of Interior Oscar L. Chapman, in accepting Davidson's resignation "with great reluctance," suggested that when the latter returns to Portland that he interest himself in the need for development of the Pacific Northwest's power potential.

A native of Lafayette, Louisiana,

Davidson entered Federal service as an attorney for the Tennessee Valley Authority, joining the Bonneville Power Administration in 1940. He became Assistant Secretary of Interior in June of 1946.

During the 1949 House and Senate hearings on the CVA proposal, it was Davidson who "carried the ball" for this administration-sponsored measure for a matter of several weeks. Although the then Secretary of Interior Julius A. Krug, and the Secretaries of Army, Agriculture, and other officers of Cabinet rank made perfunctory statements of endorsement before the Public Works committees of House and Senate, it was Davidson who was questioned in minutest detail by both committees.

In addition, Davidson was a sort of "grand marshal" of the parade of scores of supporting witnesses before the two committees. At one point in the hearings, Senator Harry P. Cain (Republican, Washington) expressed skepticism of some of the proponents' testimony, observing that it all followed a pattern that would indicate careful preparation and coaching by the Assistant Secretary.

### Gas Pipe-line Safety Sought

REPRESENTATIVE John W. Heselton (Republican, Massachusetts), during the closing days of the 81st Congress, introduced a measure which would empower the Federal Power Commission to prescribe safety regulations for natural gas pipelines and for other natural gas operations.

There was no time for the House Interstate and Foreign Commerce Committee to study the measure, but Heselton has said he will reintroduce it later this month.

## Alabama

### APC Bars Visits

THE Alabama Power Company recently joined the swelling parade of

public utilities that have returned to a wartime footing with respect to visits to their power plants. As a defense precau-

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tion APC has closed its power plants and other strategic facilities to the general

public. President J. M. Barry, made the announcement.

### District of Columbia

#### Transit Radio Fight to Congress?

THE Transit Riders Association, a local organization affiliated with the National Citizens' Committee against Forced Listening, has announced an "all-out, bipartisan legislative attack" to outlaw any form of forced listening upon "any" captive audience, whether it be in industry or in mass transportation.

In a lengthy year-end announcement, the TRA said it would seek in the new Congress passage of a bill sponsored by "both Democrats and Republicans" to bar such "forced listening," which, according to the TRA and the NCAFL, is

"tyrannical, un-American, and communistic to the core."

The two organizations will press for national legislation "clearly" outlawing forced listening as a form of involuntary servitude, the announcement said, because "the scourge of forced listening is not confined to any one city nor even to the mass transportation industry."

The TRA of Washington some months ago unsuccessfully sought to enjoin local transit radio in the U. S. District Court for the District of Columbia. The court's decision is now pending in the U. S. Court of Appeals for the District of Columbia.

### Idaho

#### IPC-Reclamation Contract Signed

A CONTRACT was recently signed between the Idaho Power Company and the U. S. Bureau of Reclamation for the transmission of electric power by Idaho to customers of the bureau, and the purchase by the company of surplus power from four Federal plants in southern Idaho. The contract supersedes 10 others dating as far back as 1929, and became effective in late December.

Under the contract, the company's transmission system will be used to wheel power from government plants at Black Canyon, Diversion, Minidoka, and Anderson Ranch to a number of existing irrigation pumping plants served by the bureau, and for the bureau's own use.

Integration of the government plants with the company's transmission grid makes possible an interchange of power throughout the region as needed, and the company is enabled to buy the surplus available power after the Bureau of Reclamation has met the requirements of

its own uses and those of its customers.

The Bureau of Reclamation will pay a transmission charge of one mill per kilowatt hour for electricity delivered into the area west of Glens Ferry, and 1.5 mills per kilowatt hour east of that point. An additional 2 to 2.3 mills will be paid for the use of company transmission facilities used in supplying certain Federal requirements.

In return for utilizing the unused storage capacity in Federal reservoirs to gain maximum flexibility in power system operations, and for the power it receives from government plants, the company contracted to pay a minimum of \$129,000 annually, subject to some adjustments.

Harold T. Nelson, regional director of the Bureau of Reclamation, said the contract provides a coordinated plan for operation of the company and bureau plants that will obtain the greatest amount of salable power from the installations of both parties.

Idaho Power Company's president, T. E. Roach, said the company was "grati-

## PUBLIC UTILITIES FORTNIGHTLY

fied" to conclude the arrangement, and expressed the view that it would undoubtedly be of mutual benefit to the government, the company, and the power users of southern Idaho. He also pointed

out that the government has been saved the cost of transmission line construction, and has been provided a market for both firm and secondary power generated at various irrigation projects.

### New York

#### Power Resales Halted

**T**HE state public service commission has ordered a halt, effective June 30, 1951, to the practice of submetering electricity, which has provoked thousands of complaints from New York city apartment dwellers over a period of twenty-five years that some submeterers had gouged them by excessive rates.

The PSC acted by approving a request of the Consolidated Edison Company which had asked for permission to refuse to sell wholesale electricity to submetering companies that in turn had retailed the power to some 46,000 residential customers in Manhattan and the Bronx. The principal difficulty up to recently had been the fact that the PSC had no jurisdiction under the law over submetering concerns.

Commission Chairman Benjamin F. Feinberg made it clear that unethical practices were confined to a few unscrupulous submetering concerns and that a great many of the submeterers dealt fairly and honestly with their customers.

Under the PSC's ruling, the New York tenants who now buy submetered electricity will have two alternatives after June 30th: (1) Either their submetering

company will go out of business, since it can no longer buy wholesale power, and the tenant will buy direct from Consolidated Edison Company, or (2) a landlord who has been submetering electric power will charge each tenant a flat rate per month, to be added to his rent, and supply him with all the electricity he needs.

It is estimated that some 250 submetering companies would be forced to go out of business as a result of the commission's order.

The request by Consolidated Edison for permission to end submetering was contained in a new tariff schedule filed by the company.

#### Long Island Merger Approved

**T**HE Securities and Exchange Commission recently approved the merger of the Long Beach Gas Company, Inc., into its parent, Long Island Lighting Company. The latter will assume \$692,400 in 5 per cent first mortgage bonds of Long Beach Gas Company, and 3,225 Long Beach preferred shares and 1,000 common shares are to be canceled. A debt of \$1,214,288 owed to the parent by Long Beach will also be canceled.

### Virginia

#### Utilities Tax By-passed

**T**HE state corporation commission recently decided not to levy its special revenue tax on public utilities and motor carriers in 1951. An SCC order said there was on hand a "reasonable margin" in reserve from previous years.

The levy of two-tenths of one per cent

on gross receipts is provided by law to pay SCC expenses of investigation, assessment, and other activities incidental to its duties of regulating public utilities.

The tax in 1949 brought in \$315,673.37. It was not levied from 1940 through 1943, or in 1945 and 1947, but the commission has been collecting it for the past three years.



## Progress of Regulation

### Issuance of Securities to Finance Coöperative Plant Found Contrary to Public Interest

THE Virginia commission denied an application by Old Dominion Electric Coöperative for authority to issue securities and assume obligations for the purpose of building a steam plant and building or acquiring transmission lines, with necessary substations. The project was found to be contrary to the public interest because the coöperatives which would obtain electricity from Old Dominion could obtain service at a lower cost from Virginia Electric & Power Company.

Counsel for Old Dominion argued that the only question for the commission to decide was whether or not the amount involved (\$16,000,000) was needed to acquire the structures described in the application. The commission, however, ruled that the Public Utilities Securities Law requires examination of the question whether the public interest will be served by the proposal. Commissioner Catterall, delivering the opinion, said:

Since the policy of the statute is to see that public utilities are financed in so prudent a manner that they will not have to charge their customers unduly high rates in order to discharge the financial obligations assumed, it would defeat the purpose of the law if the final decision to issue the securities were made by the utility with no supervision by the commission. If the utility, by deciding to build a \$16,000,000 plant automatically had the right to borrow \$16,000,000, there would be no func-

tion for the state corporation commission to perform except solemnly to record the fact that \$16,000,000 would be reasonably necessary to build a \$16,000,000 plant.

The public interest to be considered by the commission, it was said, is the welfare of that part of the public that is served by the utility. Investors in public utility securities receive benefits from public regulation. The state wants public utility stocks and bonds to be sound investments so that they can be floated at low rates of interest and moderate dividend rates.

But, Commissioner Catterall continued, the investors are only incidentally the beneficiaries of this public policy. The state is interested in the soundness of utility securities because the sounder they are, the lower the interest and dividend rates, and the financial saving from low interest and dividend rates results in a lowering of rates the public has to pay for service. The state is also concerned with the solvency of public service companies primarily because of the effect on the public.

The commission overruled an objection by the applicant that it had no right to compare Old Dominion rates with company rates. Counsel for Old Dominion said that consumers are entitled to the cheapest possible Old Dominion electricity—not the cheapest possible electricity. The commission took the position that the thing that counts is what the

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ultimate consumers get and not the corporate structure through which they get it. Examining the figures presented, the commission concluded that the money to be spent by Old Dominion would not produce cheaper electricity. Old Dominion raised the question whether a rate of 7.5 mills per kilowatt hour for current furnished by Virginia Electric & Power Company was so low as to be illegal. The commission thought that it was not so low as to be illegal. A utility, it was said, may properly charge different rates to different classes of consumers and it is proper to put electric coöperatives in a class by themselves.

A distinction was noted with respect to what must be produced by rates of a coöperative as compared with a privately owned company. An ordinary power company sets up an ordinary depreciation reserve. It is capitalized partly by bonds and partly by stock. It is not permitted to charge rates high enough to produce sufficient earnings to attract equity capital and to pay off its bonds. Corporations organized under the Electric Coöperatives Act, however, are required to charge rates high enough to produce sufficient earnings to pay off their bonds. A coöperative must earn enough to pay its

debts and create a reserve sufficient to replace its property, allowing for fluctuations in property cost.

The further finding was made that Old Dominion would not give better service than Virginia Electric & Power Company.

Moreover, the commission decided that denial of the application would not keep the co-ops from purchasing government power if Southeastern Power Administration would sell it to them. There was some discussion of the question whether Southeastern Power Administration would sell current to the company for resale to coöperatives if the company did not abandon a pending application for a Federal license to build a dam at Roanoke Rapids.

The commission, it was concluded, could not approve an application the effect of which would be to take from the rural consumers of electricity in Virginia more than \$20,000,000 over a period of thirty-five years and give them nothing in return. Since the company's current would cost them that much less than the same amount of Old Dominion current, they would "simply be throwing away at least \$20,000,000." *Re Old Dominion Electric Coöperative (Case No. 9555).*



### State Has Power to Fix Price of Natural Gas at Wellhead

THE United States Supreme Court affirmed a decision of the Oklahoma Supreme Court upholding an order of the state corporation commission requiring a natural gas company to connect its pipeline to another company's well, take gas from the well ratably with its taking from other wells in the field, and charge a fixed minimum price at the wellhead for gas to be taken from the field.

The proceeding originated before the state commission under the following circumstances: The Guymon-Hugoton gas field in Oklahoma consists of about 300 wells, of which about 240 are producing. Two of the companies operating in the field are Peerless and Cities Service. Peerless owned no pipeline; Cities Service did. Because of a difference in

gas pressure, production at Cities' wells was causing drainage from Peerless' section of the field. Peerless then offered to sell the output of its wells to Cities. Cities refused unless Peerless dedicated its entire output to Cities at 4 cents per thousand cubic feet. Peerless considered the price too low and brought the matter to the commission's attention.

The commission order fixing the price at the wellhead for gas taken from the field was based principally on the fact that there was no competitive market for the gas and that, consequently, integrated well and pipe-line owners could dictate the price paid to producers without pipe-line outlets. This, the commission felt, resulted in gas being taken from the field at a price below the economic value, caus-

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ing economic and physical waste of gas.

After the state supreme court affirmed the commission's order, Cities Service appealed to the United States Supreme Court on the ground that the order violated the due process, equal protection, and commerce clauses of the Federal Constitution.

The Court described the due process and equal protection issues as "substantially without substance." A state may adopt reasonable regulations to prevent economic and physical waste of natural gas.

The commission's price-fixing order, the court continued, is lawful because it is substantially related to the legitimate end of eliminating the low field prices which were, in the commission's words, "resulting in economic waste and conducive to physical waste."

Cities Service's argument that the order placed an undue burden on interstate commerce was likewise found to be without merit. After pointing out that a state may regulate matters of local concern over which Federal authority has not been exercised even though the regulation has some effect on interstate commerce, the court set forth the requirements for such

regulation, which it held were satisfied by the order in question:

... that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions.

Finally, the Court observed that the question as to whether the Natural Gas Act authorizes the Federal Power Commission to set field prices for gas or leaves that function to the state was not before it in this proceeding.

In a companion case Phillips Petroleum Company attacked the order on the ground that it definitely violated its rights under the due process and equal protection clauses since it was not a purchaser but merely a producer in the field. The Court ruled that the distinction was without a difference. The connection between realized price and conservation applies to all production in the field whether owners purchase from others or not, and whether they own pipelines or not. *Cities Service Gas Co. v. Peerless Oil & Gas Co. et al.*; *Phillips Petroleum Co. v. Oklahoma et al.*



### Co-op Member's Preference for Company Service Honored

**A**n electric utility was authorized by the Connecticut commission to extend service to a residence served by a co-operative where the customer indicated a preference for the company service.

The customer, a member of the co-operative, had indicated to the commission that he considered the utility service more reliable.

No duplication of facilities would result, since the company's lines were already within 200 feet of his premises.

The commission believed that, since the co-op first extended its lines in 1941,

the customer by paying his regular bills had repaid the co-op for its initial installation and that, in view of all these circumstances, he should be permitted to receive the service of his choice.

A similar application by another co-op member was denied when it appeared that the utility would have to duplicate some of the co-op's facilities to render the service and that the customer had not been receiving service long enough to permit the co-op to regain its initial investment. *Re Connecticut Valley Electric Co., Inc. (D-E2993, Order No. 5731).*



### Fixture Water Rates Called Obsolete

**A** WATER company's proposal to bill all customers in accordance with

its meter rate was approved by the Massachusetts Department of Public

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Utilities. The company's existing schedules permitted the customers a choice of either a fixture or meter rate. The department stated that the optional use of fixture rates was an obsolete method of assessing charges. This method encouraged the waste of water and jeopardized the company's ability to serve. The proposed meter rates would enable the company to assess charges more equitably in accordance with volume of water used by various customers.

The department pointed out that this proceeding was not a revenue case in

the normally accepted use of the term. The company for the past three years had been operating at a deficit and expected to continue to operate at a loss for some years to come. It was noted that the company might experience some drop in revenues from present customers, since they would become more conservative in water usage and eliminate waste under a meter rate. The company expected to make certain major replacements in its pumping stations and distribution system. Consequently, expenses were more apt to be higher. *Re Whittin Machine Works (DPU 9094).*



### Multiple-line Rates Apply to Motor Carrier Operations

THE North Dakota commission authorized rate increases for small operators of motor carrier service when it found that these operators had not earned sufficient revenues to compensate them adequately for the services performed. The rate of return for the operators as a group averaged less than 5 per cent for the past year.

In discussing the manner in which the rate increases should be accomplished, the carriers claimed that they should be treated similar to the rail carriers in that higher scales of rates should be prescribed for transportation of goods over two or more carriers than over one carrier.

The commission pointed out that during the past twenty years it has generally been the policy of practically all administrative bodies, both state and Federal, to prescribe what is commonly called multiple-line rates, or rates applicable for the continuous mileage over the lines

of one or more carriers. The commission has followed that policy.

This principle provides the same relative rates for all communities and shippers throughout the state regardless of whether or not a particular shipment must move over one or more carriers. This is much more simple and satisfactory in its application. The commission said that the rail class rates to which the motor carriers alluded have not been before it for consideration for approximately twenty years. When occasion arises, it said, one scale of rates for single and joint line application would be prescribed.

The commission did say that this is not an ironbound principle to be followed in all instances, but should be departed from only when sufficient justification exists. That was not shown in this particular case. *Re Rate Increases and Adjustments for Class "A" Motor Carriers (Case No. M-479, Sub. No. 11).*



### Outside Connections Prevent Telephone Company From Being a One-city Utility

THE Kansas commission has jurisdiction over public utility companies unless such a company is a "one-city utility." Authority to regulate public utilities "situated and operated wholly or principally within any city or principally

operated for the benefit of any such city or its people" is vested exclusively in the city.

The Kansas commission decided that a telephone company organized to engage in the general telephone business as a

## PROGRESS OF REGULATION

public utility at Moundridge, Kansas, is subject to the jurisdiction of the commission. It therefore followed that the company could not put into effect rates established by a city ordinance differing from rates established by the commission.

The company, it was held, cannot change rate schedules without the consent of the commission.

It was shown that the 350 patrons of the company residing in the city had connections with (1) a rural area embracing parts of three counties with 431 subscriber-owned telephones, (2) an unincorporated town 8 miles distant, (3) residents on rural routes or in trade territories of at least seven other towns, (4) a line connecting with another company that has 464 subscribers in both city and rural areas, (5) a line connecting with another telephone company having 319 subscribers in both city and rural areas, and (6) the Bell system with its connections not only in Kansas and the United

States but throughout the world. The commission declared:

Perhaps conceivably the Moundridge Company could be a "one-city utility" if it was limited strictly to the confines of Moundridge; had no connections with the Bell system; rendered no service to subscriber-owned telephones in the rural areas, and had no connections with the Hesston and Goessel companies and their patrons. To be sure, such a telephone system that was located within a given city would essentially be no more than an intercommunication system and would have no contact with the outside world.

It is doubtful whether such an intercommunication system could financially survive, because the evidence is clear that the Moundridge Company must receive substantial revenues from sources of the "outside world."

*Re Moundridge Teleph. Co., Inc., (Docket No. 40,677-U).*



### Certificate Not Affected by Municipal Incorporation

THE supreme court of Alabama affirmed a decision of a lower court denying relief in part in an action to enjoin operation of taxicabs within the police jurisdiction of a municipality. The company operated busses over highways pursuant to a certificate, and upon subsequent incorporation by the town operated taxicabs over these roads.

The trial court prohibited the company from operating on streets within the town, except those authorized under the certificate, and prohibited the carrying of passengers from points wholly within the town's police jurisdiction. It was held that the taxi company could

pick up passengers outside the municipal limits and discharge them in the town and could pick up passengers within the municipal limits and discharge them outside the town limits. These operations could not be enjoined unless there was proof that such operations interfered or obstructed ordinary, usual travel.

The court pointed out that the town's constitutional power to refuse or grant a taxicab company the right to use city streets in its business does not supersede the right to use such roads pursuant to a certificate issued prior to incorporation of the town. *Fultondale v. Clelland Bus Lines, Inc. 48So2d 21.*



### Racing Enthusiast's Complaint against Service Loss Dismissed

A SUBSCRIBER's complaint against a telephone company's discontinuance of service was dismissed by the New Jersey Board of Public Utility Commissioners.

The company based its action on its investigation of the use of the telephone at the subscriber's residence.

The subscriber's husband had made a

## PUBLIC UTILITIES FORTNIGHTLY

large number of telephone calls to a newspaper providing racing news service in New York state and had paid upwards of \$1,000 to the paper. Many other calls were made from the subscriber's phone to places in New York city where service had since been disconnected after police raids disclosed unlawful activity.

The subscriber's husband denied that he was engaged in bookmaking and attempted to explain these telephone calls by his interest in buying and selling horses, by describing himself as a racing enthusiast, and by the concern of one of the persons called over the illness of a former partner.

The commission pointed out that a company cannot be compelled to furnish service which it has reasonable cause to believe will be used in furtherance of il-

legal enterprises. Its opinion on the evidence presented is summarized in this statement:

... the record fails to disclose with certainty the scope of the investigation made by the company or the information obtained by it before discontinuing the service to the Petillo residence. However, the record and the facts hereinbefore set out, and later becoming known, satisfy us that it is reasonably probable that the service had been used prior to its discontinuance in or in furtherance of gambling transactions and that there is reasonable probability that they will again be so used if such service is restored.

*Petillo v. New Jersey Bell Telephone Co.*  
(Docket No. 5264).



## Railroad Must Consider Public Responsibility

THE Indiana commission refused to permit a railroad to discontinue an agency station which had sufficient business to justify its existence where it appeared that the roads in the area were in poor condition in bad weather and that it was 12 miles from the existing station to the nearest agency station.

The commission requested the railroad to keep in mind its responsibility to communities which it served, in these words:

Not all persons or corporations engaged in business in the commercial

world, or operating a public utility, are able to realize a profit from each item of business. Merchants sometimes carry a line of goods, unprofitable as to that particular line, but necessary to accommodate customers. A railroad company operating through a community, enjoying the rights of eminent domain, should be more responsible to the community than a concern engaged in private lines of business.

*Re New York Central R. Co.* (No. 21-437).



## Error in Original Award Justifies Hearing Demand on Radio License Renewal

A FEDERAL Communications Commission decision in a radio interference case was affirmed in part and reversed in part by the United States Court of Appeals for the District of Columbia.

The court dismissed the appeal from the denial of the station's request that a new station be required to show cause why it should not install a directional an-

tenna to prevent interference. The court ruled that it was clearly apparent in the wording of § 402(b) of the Federal Communications Act that it had no jurisdiction over the appeal.

However, the court reversed the commission's refusal to designate for a hearing the new station's license renewal application. The record indicated that at the time that the license was awarded,

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## PROGRESS OF REGULATION

expert engineers testified that the new station would not interfere with the station already serving the area. This testimony proved to be erroneous.

The court ruled that on hearing a renewal application matters affecting the grant of the original application must be considered. An error in good faith as to a proposed operation should leave that matter for determination upon application for renewal. The error as to interference should have been considered at a hearing, the court said:

In conclusion, this word of caution was added:

We do not mean to intimate that an application for renewal reopens all the questions which were considered upon the original application. This decision is no broader than the facts. It concerns a case in which all parties, acting in good faith upon a factual matter, were in error and in which the error is asserted to have resulted in an unauthorized impingement upon an existing license.

*Radio Station WOW, Inc. v. Federal Communications Commission et al.* 184 F2d 257.



### Other Important Rulings

THE supreme court of Nebraska reversed an order of the commission authorizing the sale and transfer of an intrastate carrier's stock to an interstate carrier on the ground that the statute giving the commission jurisdiction of such sale applied only to intrastate carriers and that the interstate carrier was not "such motor carrier" under the act as to give the commission jurisdiction. *Re Silberman*, 44 NW2d 595.

The Wisconsin commission held that a gas company should eliminate from plant accounts, and charge to earned surplus account, profits on construction done for it by another company and recover that amount from the other company where, although there were no common stock holdings or common officers and directors of the two companies constituting *prima facie* affiliation under state statutes, there was a close association of individuals connected in one capacity or another with the two companies. *Re Wisconsin Southern Gas Co.* (2-U-3399).

The superior court of Pennsylvania affirmed an order of the commission requiring a municipality to pay a portion of the cost of altering and repairing viaducts and held that a statute providing that a viaduct shall be constructed, repaired, and maintained at the expense of

the state relates only to bridges on a state highway and does not include bridges erected pursuant to the grade-crossing powers of the commission. *Butler v. Pennsylvania Pub. Utility Commission*, 75 A2d 611.

The United States Court of Appeals dismissed an appeal by an airline from a Civil Aeronautics Board decision affecting a transfer of temporary operating authority between airlines when it appeared that the decision was one which required presidential approval and that until the President acted, the order was immune from judicial review. *Trans World Airlines v. Civil Aeronautics Board*, 184 F2d 66.

The United States Court of Appeals ruled that it did not have authority to set aside an order of the Civil Aeronautics Board because of the board's failure to make adequate findings regarding a petition for authority to engage in certain air transportation where the air carrier bringing the appeal did not urge this objection before the board and offered no reason to the court for its failure to do so. *Seaboard & Western Airlines, Inc. v. Civil Aeronautics Board*, 183 F2d 975.

In authorizing a telephone company to increase its rates 25 cents "across the

## PUBLIC UTILITIES FORTNIGHTLY

board," the Wisconsin commission commented that the new rates would afford the company a 4.2 per cent return on its net book value rate base, which was not excessive. *Re Casco Teleph. Co. (2-U-3389)*.

The court of appeals of Tennessee, in considering the rights of several motor carriers involved in a mortgage of a certificate of convenience and necessity, ruled that the pledge of a certificate is valid without commission approval, but that the party to whom it is pledged may not conduct the operations contemplated by the certificate until the commission approves the transaction. *Costello v. Acco Transport Co. 232 SW2d 297*.

The Missouri commission said that the discontinuance of an open agency station is usually authorized where revenues have not been as great as the expenses incident to its maintenance as an open

station but that this is contingent on the absence of other factors making continued maintenance of the station necessary. *Re Gulf, M. & O. R. Co. (Case No. 11,697)*.

The supreme court of Ohio reversed an order of the commission granting a certificate of convenience and necessity on the ground that there had been no recital of specific findings of facts and that, in the absence of such requirement, it cannot be concluded or surmised that the necessary facts were found. *Wabash Valley Coach Co. v. Arrow Coach Lines, Inc. et al. 94 NE2d 753*.

The Missouri commission denied authority to discontinue an agent at a railroad station where the station showed a small profit and there would be inconvenience to patrons because of the poor condition of roads in inclement weather and poor telephone service. *Re Kansas City Southern R. Co. (Case No. 11,696)*.

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*Public Utilities Reports (New Series)* are published in five bound volumes annually, with an Annual Digest. These Reports contain the cases preprinted in the issues of PUBLIC UTILITIES FORTNIGHTLY, as well as additional cases and digests of cases. The volumes are \$7.50 each; the Annual Digest \$6.00. *Public Utilities Reports* also will subsequently contain in full or abstract form cases referred to in the foregoing pages of "Progress of Regulation."

UNITED STATES COURT OF APPEALS, FOURTH CIRCUIT

Pennsylvania Water & Power Company  
et al.

v.

Consolidated Gas, Electric Light & Power  
Company of Baltimore (Public Service  
Commission of Maryland, Intervenor)

No. 6102  
184 F2d 552  
September 30, 1950

**A** PPEAL from order of United States District Court upholding validity of contract between two power companies, directing that the companies arbitrate their differences, and continuing an injunction against one company pending final determination of the issues; reversed and remanded.

*Monopoly and competition, § 21 — Rate-fixing contracts between power companies — Antitrust laws.*

1. A contract between two power companies operating in adjacent states, which has the effect of fixing the prices at which one company may sell its products, the extent to which it may expand its plant, the territory in which it may sell electric energy, and the amount of back feed energy which it must purchase from the other utility is invalid under § 1 of the Sherman Act, 15 USCA § 1, which provides that every contract in restraint of trade or commerce among the several states is illegal, p. 40.

*Monopoly and competition, § 21 — Contracts limiting competition — Antitrust laws.*

2. A territorial agreement which forecloses a power company from a substantial market in an adjacent state is violative of the Sherman Antitrust Act, 15 USCA § 1, since the statute is broken as well by the prevention as by the destruction of competition, p. 41.

*Monopoly and competition, § 21 — Contracts dividing territory between utilities — Antitrust laws.*

3. A territorial agreement between utilities operating in adjacent states, which permits one utility to determine what customers and in what territory the other may operate is illegal, inasmuch as it violates the Sherman Act, p. 41.

*Monopoly and competition, § 21 — Contracts limiting activity of power company — Clayton Act.*

4. An agreement is violative of the Clayton Act which requires one power

## UNITED STATES COURT OF APPEALS

company to have its purchases of power approved by another from whom it purchases back feed or supplemental energy in order to meet the requirements of its outstanding contracts, since the agreement prohibits the obligated utility from purchasing power from the controlling utility's competitors, p. 41.

### *Monopoly and competition, § 21 — Contracts between utilities — Antitrust laws — Public benefit.*

5. It is not important, in considering the validity of a contract between two power companies in which one company is given power to control the rates, service area, plant expansion, and energy purchases of another, to determine whether or not the contract is beneficial to the public and the stockholders of the obligated utility, since the prohibitions of the antitrust statutes apply even though the parties to the contract indulge the belief that the agreement may have beneficial results and actually show that in some respects the public is benefited, p. 42.

### *Monopoly and competition, § 22 — Contracts between utilities limiting competition — Antitrust laws — Application to regulated industry.*

6. The antitrust laws have the same application to publicly regulated industries as they do to private enterprises, since a rate-fixing agreement between utilities may be invalid not because the rates which it produces are unreasonable or unlawful, but because it deprives utilities of the power to perform the duties imposed upon them to propose their own rates, plant expansions, and fields of activity, p. 42.

### *Monopoly and competition, § 22 — Application of antitrust laws to utility.*

7. The grant of monopolistic privileges to a utility corporation, subject to regulation by a governmental body, does not carry an exemption from the antitrust laws or deprive the courts of jurisdiction to enforce such laws, p. 43.

### *Monopoly and competition, § 5 — Jurisdiction of Federal court — Contracts between power companies limiting competition — Antitrust laws.*

8. No prior administrative action is required of the Federal Power Commission before the United States district court can determine whether or not a contract between two power companies is violative of the antitrust laws, since the prohibition against monopolistic combinations was included in the Federal Power Act among the conditions upon which the Commission may issue licenses for the construction and maintenance of power projects—not to deprive the courts of jurisdiction to enforce the antitrust acts, but to make it perfectly clear that no licensee can legally agree to limit output, restrain trade, or fix prices, and was designed to restrict rather than to enlarge the Federal Power Commission's authority, p. 43.

### *Monopoly and competition, § 4 — Rate agreement between power companies — Limitation of competition — Validity.*

9. An agreement between two power companies, which has the effect of conferring on one company the power to control the other's rates, plant expansion, territory, and the amount of back feed energy which the other must purchase from it is invalid, since it restricts the power of the obligated utility to perform one of the most important duties inherent in its utility franchise, that is, the duty to take the initiative in proposing reasonable rates and rendering adequate service to the public, p. 51.

PENNSYLVANIA WATER & P. CO. v. CONSOL. GAS, E. L. & P. CO.

*Monopoly and competition, § 21 — Enforcement of antitrust laws — Agreement between power companies.*

Statement that the exercise of its powers by the Federal Power Commission over monopolistic practices by power companies is not a prerequisite to a suit by the United States to restrain violations of the Sherman Act, p. 47.

*Rates, § 68 — Duty of utility to propose reasonable rates — Effect of regulation.*

Statement that a utility is not relieved from its duty to take the initiative in proposing reasonable rates and rendering adequate service to the public because of the fact that its activities are subject to governmental regulation, since a regulatory Commission is not clothed with the responsibility, or qualified, to manage the utility's business, p. 52.

APPEARANCES: James Piper, Baltimore, Md., Wilkie Bushby, New York city, and Charles E. Thomas, Harrisburg, Pa., (R. Dorsey Watkins, Baltimore, Md., William J. Grove and Lloyd S. Benjamin, Harrisburg Pa., on the brief), for appellants; Harry N. Baetjer, Alfred P. Ramsey, and Charles D. Harris, Baltimore, Md., (G. Kenneth Reiblich, Norwood B. Orrick, and John Henry Lewin, Baltimore, Md., on the brief), for appellees.

Before Parker, C.J., and Soper and Dobie, C.JJ.

SOPER, C.J.: The subject matter of this suit is a wholesale electric power agreement between Consolidated Gas, Electric Light & Power Company of Baltimore, a Maryland utility corporation, and Pennsylvania Water & Power Company, a Pennsylvania utility corporation. Penn Water seeks a declaratory judgment that the agreement is not a valid contract principally on the grounds that it violates the Federal antitrust laws and is contrary to the public policy and the laws of Pennsylvania.

Differences between the parties led Consolidated on September 1, 1948, to invoke arbitration provisions contained in Article X of the contract.

Shortly thereafter, Penn Water instituted this suit and asked the court to declare that Article X is unenforceable, and to enjoin Consolidated from proceeding with the arbitration. During the course of the proceeding, Penn Water notified Consolidated that it had terminated the agreement because of breaches on the part of Consolidated, and filed an amended complaint asking that the agreement be struck down in its entirety and also that the arbitration be enjoined.

Penn Water notified Consolidated that it would immediately cease to receive from Consolidated and pay for any electric energy generated in Maryland or the District of Columbia and transmitted to Pennsylvania, and that its operations would be changed to effect this purpose. It declared that it would receive energy via its transmission lines for the limited purpose of delivery to the Pennsylvania Railroad; and announced that these changes would have no effect on the amount of electrical services rendered by Penn Water to Consolidated. Thereupon Consolidated applied to the court for a restraining order and on February 9, 1949, the court restrained Penn Water, pending the final determination of the issues, from doing anything

## UNITED STATES COURT OF APPEALS

in respect to the generation, transmission, and disposition of power covered by the agreement between the parties in any manner different from the procedure theretofore followed in the performance of the contract. Thereafter Consolidated answered the amended complaint denying that the agreement is invalid for any reason, or that it had broken the agreement in any way, and asserted that the alleged breaches were proper subjects of arbitration under the contract.

The attorney for the Public Service Commission of Maryland was granted leave to appear on behalf of the Commission as intervener, and filed an explanatory statement of its position in support of Consolidated. The Pennsylvania Public Utility Commission intervened and charged that the contract between the two utilities is invalid because it constitutes a surrender of the powers and franchises of Penn Water to Consolidated without the approval of the Commission.

The court held that the contract was valid and that the parties should proceed to arbitration and continue the restraining order in effect until the decision of this court on appeal.

Penn Water is a Pennsylvania utility corporation which was incorporated in 1910. It is the owner of hydro and steam electrical generating plants, capable of producing 104,000 kilowatts and 30,000 kilowatts respectively, at Holtwood, Pennsylvania, on the Susquehanna river. It also owns transmission lines, including those owned by its subsidiary, Susquehanna Transmission Company of Maryland, which connect with other utilities in Pennsylvania, Maryland, and the District of Columbia. The area between

the Potomac river on the southwest and the Hudson river on the northeast and south of the Pennsylvania-New York state line is interlaced with electric transmission lines connecting various utility systems. Penn Water's lines are interconnected with these systems which include the systems of Consolidated in Maryland and the Potomac Electric Power Company in the District of Columbia.

In 1910 Penn Water built two transmission lines from Holtwood to Baltimore, and subsequently added various other lines. Today there are in addition a transmission line running northeasterly from Holtwood to Coatesville for the supply of power to the Chester Valley Electric Company, now merged with the Philadelphia Electric Company; a transmission line running northwesterly from Holtwood to York to supply power to the Edison Light & Power Company; a transmission line from the hydroelectric plant of the Safe Harbor Water Power Corporation<sup>1</sup> at Safe Harbor on the Susquehanna, 10 miles above Holtwood, to the western part of Baltimore; and a transmission line from Safe Harbor to the eastern part of Baltimore; an extension of the westerly one of these lines from Ellicott City, Maryland, to a point near the District of Columbia, to supply Potomac Electric, which serves the District of Columbia; and a transmission line from Safe Harbor to Perryville, Maryland, along the eastern shore of the Susquehanna river which supplies power to the Pennsylvania Railroad at Perryville. That portion of these lines which is in Maryland is owned by the

<sup>1</sup> This plant was built and is controlled by Consolidated and Penn Water.

## PENNSYLVANIA WATER & P. CO. v. CONSOL. GAS, E. L. & P. CO.

Susquehanna Transmission Company of Maryland.

Penn Water sells its electric energy and services in bulk to five customers. It has a contract with Metropolitan Edison Company, which operates in the central and eastern part of Pennsylvania; a contract under which it supplies electric services to the Philadelphia Electric Company at Coatesville, which serves an area around Chester, Pennsylvania; a contract with Pennsylvania Power & Light Company for the supply of power in the Lancaster territory extending from the Maryland line north to Harrisburg and eastward to Reading. These three public utility companies are the Pennsylvania customers of Penn Water. In addition Penn Water has a contract with Consolidated to supply power and energy over transmission lines to Baltimore, and also in connection with another contract to the Pennsylvania Railroad. Most of the energy supplied to the railroad is delivered from Safe Harbor to Perryville, but there is another source of supply to the railroad in Washington. It will be seen that the greater part of the energy produced by Penn Water is sold at wholesale to four customers, while the remaining portion is sold at retail to the Pennsylvania Railroad as a consumer.

Prior to entering into the agreement in suit, Penn Water sold electricity at retail to the street system of Baltimore, which is now a customer of Consolidated; and also to an electric furnace company in Baltimore. The lines of Penn Water connect directly with those of Potomac Electric and it could sell and deliver electric power directly to Potomac Electric if it were not for

its contract with Consolidated which now buys electric power from Penn Water and resells it to Potomac Electric.

Penn Water, in order to supplement its own supply of energy, buys energy generated by Consolidated, Metropolitan Edison, Pennsylvania Power & Light, and Philadelphia Electric for resale, and also buys through Consolidated energy generated by Potomac Electric.

Consolidated has four large steam generating plants with a capacity of 538,000 kilowatts and distribution facilities in and around Baltimore, and also has extensive transmission lines which connect with Penn Water's network of transmission lines and with the Bethlehem Steel Company's electric generating plant in the Baltimore area.

It thus appears that both Penn Water and Consolidated are engaged in the generation, transmission, and sale of electric power and energy. Both companies have charter rights for the sale of electric energy to the public at wholesale or retail. Penn Water's charter rights are derived from the state of Pennsylvania, in so far as its lines in that state are concerned, and through the Susquehanna Transmission Company in Maryland it has similar charter rights to operate in Maryland. Consolidated has similar charter rights for the purchase and sale of electric energy in Maryland.

If it were not for the agreement between the parties which is the subject of this suit, the parties would be potential competitors in the generation and sale of electric energy through their present facilities or other facilities that might be constructed; and

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would also be potential competitors in the purchase of power from others for resale. The power required by Potomac Electric to supply the wants of consumers in the District of Columbia could be purchased by Potomac Electric either from Consolidated or Penn Water and could be supplied by their present facilities or additional facilities that might be built, or by purchases from others. Similarly, Penn Water and Consolidated would be potential competitors for the supply of electric energy in and around Baltimore at wholesale or retail to customers with their present lines or an extension thereof to be approved by the public authorities.

The electric power which is now distributed in and near Coatesville, Pennsylvania, by Philadelphia Electric could be supplied from the facilities now owned or additional facilities to be built by Penn Water or could be supplied from the facilities of Consolidated.

Similarly, Penn Water and Consolidated would be potential competitors with respect to energy taken from Penn Water by Metropolitan Edison and Pennsylvania Fuel & Light which is used in York and Lancaster areas.

Penn Water and Consolidated would be potential competitors for the sale of power to Potomac Edison at Frederick, Maryland, whose lines at that point are only a short distance from the lines of Penn Water so that they could easily be connected.

Free and unrestricted competition between the two utilities is, however, impossible by reason of their contractual relations. The basic agreement between them was made on June 1,

1931. For a number of years prior thereto Penn Water had supplied electricity to Consolidated. On December 31, 1927 the parties entered into an agreement covering the period from January 1, 1927 to December 31, 1970, for the cooperative use of their power resources and the sale of electric energy by Penn Water to Consolidated on a unit rate or calculated value of service basis. Thereafter the two companies cooperated in the financing and construction of a hydroelectric plant at Safe Harbor and on June 1, 1931, entered into two 49-year contracts. One of these contracts provided that Penn Water should buy one-third and Consolidated two-thirds of Safe Harbor's output. The other contract is the basic agreement in suit which altered substantially the prior arrangement between the parties. It provided that Consolidated should be entitled to all the electric capacity and energy available to Penn Water from its Holtwood plants and from Safe Harbor and not otherwise disposed of in the performance of existing contracts or new contracts entered into by Penn Water with Consolidated's approval or any obligation imposed upon Penn Water by its charter or bylaws. In return Consolidated agreed to pay to Penn Water an amount equal to the latter's operating expenses, a specified rate of return on existing facilities and a specified rate of return on the cost of new facilities, including an allowance for depreciation; and Consolidated was allowed a credit for the amount of the sales of energy by Penn Water to other persons. This agreement involved the payment by Consolidated of the annual sum of \$2,832,259.75 for power and

PENNSYLVANIA WATER & P. CO. v. CONSOL. GAS, E. L. & P. CO.

\$355,146.73 for depreciation, which represented the revenue received by Penn Water in 1930 under the previous agreement, 10.25 per cent per annum of the cost of plant additions between 1930 and 1938, and 9.5 per cent per annum of the cost of additions after December 31, 1938. This annual payment was reduced by the sum of \$600,000 under a supplemental agreement of September 29, 1939, pursuant to the request of the Public Service Commission of Maryland.

When this agreement was executed, Penn Water was receiving more than half of its revenue from consumers other than Consolidated and was selling them 40 per cent of its energy. At the present time, more than 50 per cent of this energy is sold to others than Consolidated and in 1948 Consolidated's payment amounted to less than 12 per cent of Penn Water's operating revenue.

The restrictions which are imposed upon the activity of Penn Water by the agreement and give rise to the contention of invalidity are contained in Articles IV and V as follows:

"Article IV. So far as possible consistently with the performance of any duty or obligation to serve imposed on Power by its charter or otherwise by law, Power shall obtain the approval of Electric before entering into any agreement or agreements with any other person or corporation for

the sale and/or purchase and/or interchange of electrical and hydraulic power and energy, or before making any substantial modifications in the existing contracts now in force between Power and its customers other than Electric.

"Article V. So far as possible consistently with the performance of any duty or obligation aforesaid, Power shall obtain the approval of Electric (1) before incurring any single commitment for investment (except for renewals or replacements) in excess of \$50,000 on the basis of which Electric shall make payment under Article III(b) hereof, and (2) before alienating or disposing of in any one year any property, plant, or equipment, other than stores and construction equipment, having a total value in excess of \$50,000 and included in the investments of Power and/or subsidiaries of Power in plant, property or power development devoted to the generation, transmission, or distribution of electrical power and energy."

The basic agreement was not submitted to or approved by the Public Utility Commission of either Pennsylvania or Maryland before its execution. It was made possible by the close relationship between the two utilities, which grew out of the fact that both corporations were controlled by a group of stockholders of whom John E. Aldred, an important figure in

\* Article VIII of the agreement declares that it is the intent of the parties to encourage the maximum utilization of the resources of the parties by joint use of their property and equipment and by avoiding duplication of investment and unnecessary operating costs. For this purpose it is provided that each party shall appoint one representative to serve on an operating committee to investigate and advise on operating matters and, in case of inability

to agree, to submit the questions in dispute to the presidents of their respective companies.

Article X provides that if any dispute arises between the parties, it shall be referred to a Board of Arbitration consisting of one member to be chosen by each party and the third member to be chosen by the others with further provision for the selection of members of the Board of Arbitration in case of failure to act or disagreement, the determination of the Board to be final and conclusive.

## UNITED STATES COURT OF APPEALS

the utility field, was the dominating personality. He and his associates acquired control of both corporations in 1910. He became president of both and both continued under his direction until his resignation in 1938. Thereafter the same close coöperation between the two corporations persisted until the retirement in 1946 of the officials who had participated with him in the formulation of his policies; but disagreements subsequently arose which culminated in the present litigation.

[1] The district judge found and it is not disputed that the effect of the quoted provisions of Articles IV and V of the contract is to confer upon Consolidated the power to control (1) the prices at which Power may sell its product; (2) the extent to which Power may extend its plant; (3) the territory in which Power may sell its product; and (4) the amount of back feed energy which Power must purchase from Consolidated.

We are in agreement with this interpretation of the contract. It expressly forbids plant expansion or development by Penn Water without Consolidated's consent; and also forbids the sale of electric energy by Penn Water without Consolidated's approval, and accordingly empowers Consolidated to fix Penn Water's prices. Hence the effect of the contract was to divide between two large power companies a trade territory wherein they would otherwise have been competitors; and to give one of them the power to fix prices for the other and to forbid plant expansion by the other, however beneficial to the other or to the public interest it might be.

Consolidated has actually exercised its restrictive powers in approving or disapproving Penn Water's contracts and by prohibiting Penn Water's proposals for plant expansion, notably, a proposal by Penn Water in 1948 for plant expansion at Holtwood whereby coal from the river could be salvaged and power economically produced. At the same time Consolidated erected a new steam plant for itself at Riverside, Maryland.

It follows that the contract is invalid because it violates § 1 of the Sherman Act, 15 USCA § 1, which provides that every contract in restraint of trade or commerce among the several states is illegal. While the statute has been held to apply only to those restraints which are unreasonable in character, it has been repeatedly adjudged that price fixing agreements are unlawful per se. In *United States v. Socony-Vacuum Oil Co.* (1940) 310 US 150, 221, 222, 84 L ed 1129, 60 S Ct 811 843, the court said: ". . . Any combination which tampers with price structures is engaged in an unlawful activity. Even though the members of the price-fixing group were in no position to control the market, to the extent that they raised, lowered, or stabilized prices they would be directly interfering with the free play of market forces. The act places all such schemes beyond the pale and protects that vital part of our economy against any degree of interference. Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing

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conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. If such a shift is to be made, it must be done by the Congress. Certainly Congress has not left us with any such choice. Nor has the act created or authorized the creation of any special exception in favor of the oil industry. Whatever may be its peculiar problems and characteristics, the Sherman Act, so far as price-fixing agreements are concerned, establishes one uniform rule applicable to all industries alike."

In *United States v. Masonite Corp.* (1942) 316 US 265, 276, 86 L ed 1461, 62 S Ct 1070, 1076, it was also said: ". . . Since there was price fixing, the fact that there were business reasons which made the arrangements desirable to the appellees, the fact that the effect of the combination may have been to increase the distribution of hardboard without increase of price to the consumer or even to promote competition between dealers, or the fact that from other points of view the arrangements might be deemed to have desirable consequences would be no more a legal justification for price fixing than were the 'competitive evils' in the *Socony-Vacuum Case*." See also *United States v. Paramount Pictures* (1948) 334 US 131, 143, 92 L ed 1260, 68 S Ct 915; *United States v. National Assn. of Real Estate Boards* (1950) 339 US 485, 489, 94 L ed —, 70 S Ct 711; *Norfolk-Southern Bus Corp. v. Virginia Dare Transp. Co.* (1947) 159 F2d 306.

[2] So also does an agreement vio-

late the statute which forecloses competitors from a substantial market since the statute is broken as well by the prevention as by the destruction of competition. *International Salt Co. v. United States* (1947) 332 US 392, 396, 92 L ed 20, 68 S Ct 12; *American Federation of Tobacco Growers v. Neal* (1950) 183 F2d 869.

[3] Similarly illegal is any agreement for the division of territory between competitors which in this case was effectuated by permitting Consolidated to determine to what customers and in what territory Penn Water might sell. *United States v. Aluminum Co.* (1945) 148 F2d 416; *United States v. Addyston Pipe & Steel Co.* (1898) 85 F 271, 291, 46 LRA 122.

[4] The agreement is also violative of the third section of the Clayton Act, 15 USCA § 14, in so far as it requires Penn Water's purchases of power to be approved by consolidated from whom it purchases back feed or supplemental energy in order to meet the requirements of its outstanding contracts. Thereby Penn Water is prohibited from purchasing power from Consolidated's competitors. See *Standard Oil Co. v. United States* (1949) 337 US 293, 93 L ed 1371, 69 S Ct 1051.

The contract is not one which involves the acquisition in legitimate business expansion of the plant of a competitor, such as was upheld in *United States v. Columbia Steel Co.* (1948) 334 US 495, 92 L ed 1533, 68 S Ct 1107, where the United States Steel Corporation acquired the assets of a large independent steel fabricator on the west coast. It was there found that the purchase would not unreasonably lessen competition and was not

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entered into with the intent to monopolize, and that therefore §§ 1 and 2 of the Sherman Act, 15 USCA §§ 1, 2, were not violated. The court held that so-called vertical integration is not illegal per se, but must be judged by its effect on competition, and the purpose for which the combination is entered into. The court said, 334 US at p. 522, 68 S Ct at p. 1121: ". . . A restraint may be unreasonable either because a restraint otherwise reasonable is accompanied with a specific intent to accomplish a forbidden restraint or because it falls within the class of restraints that are illegal per se. For example, where a complaint charges that the defendants have engaged in price fixing, or have concertedly refused to deal with nonmembers of an association, or have licensed a patented device on condition that unpatented materials be employed in conjunction with the patented device, then the amount of commerce involved is immaterial because such restraints are illegal per se."

[5] In view of these well-established rules, it is idle to consider the contentions of Consolidated that the contract was beneficial to the public and to the stockholders of Penn Water since it enabled Penn Water to meet its contractual obligations by supplementing its water-power product at Holtwood by Consolidated's steam produced energy, and by guaranteeing to Penn Water stockholders a return on their investment; or that Consolidated was entitled to exercise the restrictive powers in order to protect itself from the risks involved in the obligation which it assumed to pay Penn

Water's running expenses; or that the agreement was expressly designed to encourage the maximum cooperative utilization of their power and energy resources to the end that the joint use of their property and equipment should give the greatest practical benefit to the public and avoid duplication of investment and unnecessary costs of maintenance, and thus contribute toward the rendition of a high standard of service. The decisions we have cited conclusively demonstrate that the prohibitions of the statute apply even though the parties to a contract indulge the belief that the agreement may have beneficial results and actually show that in some respects the public is benefited thereby. Congress has determined that the greater good is served by the maintenance of free competition and its decision in the field of interstate commerce must control. See *United States v. Aluminum Co.* (1945) 148 F2d 416, 426; *United States v. Reading Co.* (1912) 226 US 324, 326, 358, 57 L ed 243, 33 S Ct 90.

[6] It has been suggested that although regulated industries are not per se exempt from antitrust laws,<sup>3</sup> the statutes do not have the same application to publicly regulated industries as they do to private enterprises and that in the factual situation existing in this case, the statutes were not violated. It is urged that the parties to the basic contract are not competitors in the same field since Consolidated sells its product mainly at retail to customers, while Penn Water sells electric power primarily at wholesale to Consolidated and other retail distributors, and has

<sup>3</sup> *United States v. Borden Co.* (1939) 308 US 188, 84 L ed 181, 60 S Ct 182; *Georgia v.* 86 PUR NS

*Pennsylvania R. Co.* (1945) 324 US 439, 89 L ed 1051, 59 PUR NS 132, 65 S Ct 716.

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only one retail customer, the Pennsylvania Railroad Company, which buys in large quantities. It is said that each utility has a legal monopoly in its own field and that there is no proof that the purpose or effect of the agreement has been to raise or fix unreasonably the prices of electric energy in the area served by the parties or that the customers have been deprived of any of the advantages of free competition.

This argument cannot be sustained. It does not give sufficient weight to the decisions, in which the antitrust acts have been applied to utilities, or to the potential services which Penn Water might render to the public if it were relieved of the contractual restrictions upon its activities. It was held in *Georgia v. Pennsylvania R. Co.* (1945) 324 US 439, 89 L ed 1051, 59 PUR NS 132, 65 S Ct 716, in accord with many previous decisions, that railroad carriers are subject to the antitrust laws although their rates are controlled by the Interstate Commerce Commission; and hence an agreement by carriers to fix rates may be illegal although the rates are reasonable; and that the agreement of a carrier to subject rates to the control of other carriers is invalid since it deprives the carrier of the power to perform the duty imposed upon it to initiate its own

rates. That is precisely the vice of the present contract. Penn Water has surrendered the right to propose its own rates, to extend its own plant, and to enter into new fields of activity; and it is impossible to say that the public interest has not been or will not be jeopardized by its failure to perform the duty to furnish adequate services at reasonable rates involved in its charter privilege to operate.

[7] In short, the grant of monopolistic privileges, subject to regulation by governmental body, does not carry an exemption, unless one be expressly granted, from the antitrust laws, or deprive the courts of jurisdiction to enforce them. This principle of law has been applied not only to public carriers, see *United States v. Terminal R. Asso.* (1912) 224 US 383, 56 L ed 810, 32 S Ct 507; *United States v. Reading Co.* (1920) 253 US 26, 64 L ed 760, 40 S Ct 425; but in the insurance field, *United States v. South Eastern Underwriters Asso.* (1944) 322 US 533, 559, 561, 88 L ed 1440, 64 S Ct 1162; in the telephone field, *United States Teleph. Co. v. Central U. Teleph. Co.* (1913) 202 Fed 66; and also in the field of gas and electric energy, in *Re American Fuel & Power Co.* (1941) 122 F2d 223.<sup>4</sup>

[8] On this appeal Consolidated

<sup>4</sup> It may be noted in passing that the legal monopoly of a patent does not exempt the patentee from the provisions of the Sherman Act, 15 USCA §§ 1-7, 15 note. *Williston on Contracts*, § 1647; *Standard Sanitary Mfg. Co. v. United States* (1912) 226 US 20, 57 L ed 107, 33 S Ct 9. See *United States v. General Electric Co.* (1926) 272 US 476, 485, 71 L ed 362, 47 S Ct 192; *Standard Oil Co. v. United States* (1931) 283 US 163, 169, 75 L ed 926, 51 S Ct 421.

Since we reach the conclusion that the basic agreement is invalid on its face, we have not found it necessary to consider certain excluded evidence offered by Penn Water which tended to show that the purpose and effect of the

agreement was to bring about an unlawful restraint of trade. Much of the evidence is documentary in character and should have been admitted in so far as it related to circumstances which occurred at or prior to the execution of the agreement, and tended to show its illegal purpose, or in so far as it pertained to acts of Consolidated which gave effect to that purpose. The evidence related to the period of Aldred's control. It tended to show that the purpose of the contract was to destroy the power of Penn Water to compete with Consolidated in case Penn Water should fall into unfriendly hands; that Consolidated refused to allow Penn Water to contract with the Potomac Electric Power Company in 1932

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presents for the first time in this case the contention that the district court was without jurisdiction to decide whether the basic agreement violates the Sherman Act because exclusive primary jurisdiction to determine that question has been conferred upon the Federal Power Commission by the Federal Power Act,<sup>8</sup> 16 USCA §§ 791 to 825r. That question was submitted to the district court not only by the complaint of Penn Water but also by the answer of Consolidated, and the court took jurisdiction of the issue with the express approval of both parties. Nevertheless Consolidated now contends that exclusive primary jurisdiction to consider the question was lodged in the Federal Power Commission by the statute.

Penn Water is subject to the Federal Power Act as a licensee under Part I of the act, 16 USCA §§ 791a to 823, and as a public utility under Part II of the act, 16 USCA §§ 824 to 824h. Under § 4(g) of Part I of the statute the Commission has power to investigate and issue orders in the public interest to conserve and utilize power sites of the country. 16 USCA § 797(g). It also has power under § 4(e) to issue licenses upon certain conditions for the construction and maintenance of works for the development, transmission, and utilization of

power in bodies of water which are subject to the authority of Congress to regulate interstate commerce. 16 USCA § 797(e). These conditions are set out in § 10, 16 USCA § 803 and include § 10(h), 16 USCA § 803(h), which is as follows:

*"Monopolistic combinations prohibited*

"(h) Combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited."

Section 20 of the act, 16 USCA § 813, provides that when power enters into interstate commerce, the rates charged and services rendered by a licensee shall be reasonable and nondiscriminatory; and whenever any of the states directly concerned has not provided a commission to enforce this requirement within the state, or such states are unable to agree through their properly constituted authorities on the services to be rendered and the rates to be paid, jurisdiction is conferred upon the Commission to regulate and control services and rates.

Section 26, 16 USCA § 820, provides that the Attorney General may on request of the Commission or the

for the purchase and sale of power at wholesale; that in 1946, when differences between the parties occurred, Consolidated forbade Penn Water to enter into negotiations with the Philadelphia Electric Company for the extension of contracts between them; and in 1947, after Philadelphia Electric withdrew a notice of termination of its contract with Penn Water, Consolidated objected to the acceptance of this withdrawal; in 1947, when Metropolitan Electric was in need of larger supplies of power, Consolidated objected to Penn Water exercising an option to increase its power to furnish the supplies. Again in 1947 Consolidated di-

rected Penn Water to terminate its contract with Pennsylvania Power & Light on the ground that the rates were too low. In 1947 Penn Water proposed an expansion of its transmission system to meet the needs of its Pennsylvania customers but Consolidated refused. During this period there was a great expansion of the facilities of other electric utility companies in the Pennsylvania area amounting to a total of \$520,400,000 with no expansion by Penn Water or Safe Harbor at the same time.

<sup>8</sup> 41 Stat 1063, 49 Stat 838.

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Secretary of the Army proceed in equity in a district court of the United States for the purpose of revoking any license for the violation of its terms or to prevent any act of commission or omission in violation of the statute; and the district courts are expressly given jurisdiction over the proceedings.

Part II of the Act, §§ 201-209, 16 USCA §§ 824-824h, authorizes the Commission to regulate the transmission of electric energy in interstate commerce and the sale of such energy at wholesale, provided such regulation shall extend only to those matters which are not subject to the regulation by the states. The duty is imposed upon the Commission to encourage the interconnection and coordination of facilities for the generation and sale of electric energy between regional districts which the Commission is empowered to set up; and the Commission may by order direct a public utility to establish physical connection of its facilities with the facilities of others engaged in the transmission or sale of electric energy. Section 202(b), 16 USCA § 824a (b). No public utility may sell, lease, or dispose of facilities subject to the jurisdiction of the Commission without applying to it for authority so to do. Section 203(a), 16 USCA § 824b (a). All rates and charges for such transmission or sale of electric energy, as well as contracts which affect such rates or services subject to the jurisdiction of the Commission, may be determined by the Commission. Section 205(c), 16 USCA § 824d (c); § 206(a), 16 USCA § 824e (a).

Part III, §§ 301-320, 16 USCA

§§ 825-825r, relates to administrative and procedural matters. The Commission is given the duty to investigate complaints and power to investigate violations of the act and hold hearings. Sections 307, 308, 16 USCA §§ 825f, 825g. It may issue orders and regulations to carry out the statutory provisions; § 309, 16 USCA § 825h; and persons aggrieved by any order may obtain judicial review in the circuit court of appeals. Section 313, 16 USCA § 825l. Section 314, 16 USCA § 825m, of the act empowers the Commission to bring an action in the United States district court to enjoin violations of the statute and to enforce compliance therewith, and further provides that the Commission may transmit evidence of illegal practices to the Attorney General who, in his discretion, may institute criminal proceedings under the act. The district courts of the United States are given exclusive jurisdiction of violations of the act, or of rules or orders thereunder, and of all suits to enforce any duty created by the act or enjoin any violation thereof. Section 317, 16 USCA § 825p.

It is contended that these enactments contemplate prior administrative determination by the Commission, and that until this action is taken, the district courts do not have jurisdiction to revoke licenses under § 26, 16 USCA § 820, or to restrain violations of the statute under § 314, 16 USCA § 825m. It is also suggested that since public utilities like Penn Water were subject to the Sherman Act at the time that the Federal Power Act was passed, there could have been no other reason for the insertion of the prohibitions of the Sherman

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Act in § 10(h), 16 USCA § 803(h), except to shift the forum in which restraints of trade of public utilities could be ascertained and corrected, from the district courts to the Commission.

The argument does not carry conviction. The prohibition against monopolistic combinations was included among the conditions upon which the Power Commission may issue licenses for the construction and maintenance of power projects—not to deprive the courts of jurisdiction to enforce the antitrust acts, but to make it perfectly clear that no licensee can legally agree to limit output, restrain trade or fix prices. The condition was a reaffirmance of the Sherman Act and was designed to restrict rather than to enlarge the Commission's authority.

That the condition was not inserted in the act to shift the forum for the trial of antitrust questions affecting power companies from the district courts to the Power Commission is shown by the failure of Congress to empower the Commission in § 10(h), 16 USCA § 803(h), to entertain proceedings before it to enforce the condition against monopolistic combinations. This omission is in marked contrast with the authority expressly conferred upon the Commission in respect to all the other conditions of the license to take steps to make them effectual. For example, in Condition (a) which provides that the project shall be such as is best adapted in the judgment of the Commission to utilize and improve the waterway involved, the Commission is given authority to

require modification of the plans and specifications.

It is true that § 26, 16 USCA § 820, of the Federal Power Act empowers the Commission to take action when the terms of the license are violated, but the manner in which the Commission is directed to proceed makes it very clear in the light of decisions in analogous cases that Congress did not intend to oust the district courts of jurisdiction over violations of the Sherman Act. The Commission's function is merely to request the Attorney General to institute suit to control the offending licensee and thereafter, if the Attorney General sees fit to act, the district court has jurisdiction to determine whether the terms of the license have been violated and to apply the proper remedy. This procedure, however, falls far short of making the jurisdiction of the district court contingent upon prior administrative action of the Commission, and there is nothing in the section which contemplates that the Commission must first determine administratively whether the grounds of revocation exist before the Attorney General may institute proceedings against the offender. The Commission may request court action in a proper case and the Attorney General may comply or refuse in his discretion, but there is nothing to show that the Attorney General may not act upon his own motion precisely as he did before the statute was passed.<sup>6</sup>

The case is closely analogous to the decision in *United States Alkali Export Assn. v. United States* (1945)

<sup>6</sup> The power conferred upon the Commission by § 825m to bring suit on its own initiative in the district court to enjoin violations of the Federal Power Act or enforce compliance

therewith obviously does not deprive the district court of jurisdiction to enjoin complaints instituted by the Attorney General or other parties.

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325 US 196, 89 L ed 1554, 65 S Ct 1120, which related to the provisions of the Webb-Pomerene Act, 15 USCA § 61 et seq., that exempted associations engaged in export trade from the prohibitions of the Sherman Act, provided the association acted in accordance with certain conditions. The Federal Trade Commission was empowered to investigate if it had reason to believe that the activities of an export association were not in accordance with the provisos and, if violations of the Sherman Act were found, to make recommendations to the association for readjustment of its business in accordance with law; and if the association should fail to comply with the recommendations, to send the findings and recommendations of the Commission to the Attorney General for such action as he should deem proper. It was held that the exercise of these powers by the Commission was not a prerequisite to a suit by the United States against an export association to restrain violations of the Sherman Act. The court showed that the grant of power to the Commission did not repeal pro tanto the authority conferred upon the Attorney General by the Sherman Act to enforce its provisions, and that although the Commission might render useful service by bringing violations to the attention of the Attorney General, the enforcement of the statute is in his hands and the Commission's authority is exhausted when it refers its findings to him. The court took notice of the fact that the provisions of the Sherman Act with reference to enforcement through the Attorney General were not expressly repealed by the Webb-Pomerene Act as to export associations and empha-

sized the principle that repeals by implication are not favored.

In *United States v. Borden Co.* (1939) 308 US 188, 84 L ed 181, 60 S Ct 182, a similar decision was made. An indictment against certain producers and distributors of milk for violation of the Sherman Act was sustained notwithstanding the provisions of the Capper-Volstead Act, 7 USCA §§ 291, 292, whereby dairy-men were authorized to act in concert in marketing their goods, and the Secretary of Agriculture was authorized to determine, subject to judicial review, whether a coöperative corporation restrained trade to such an extent that price of the product was unduly enhanced, and if so, to issue a cease and desist order. This procedure was held not to replace or prevent a criminal prosecution under the Sherman Act without prior action by the Secretary of Agriculture. See also *Hinton v. Columbia River Packers Assn.* (1942) 131 F2d 88, where a similar construction was given to the statutes respecting Fishermen's Cooperatives, which empowered the Secretary of the Interior to issue cease and desist orders to any association which should seek to monopolize trade in any aquatic project. In these cases the principle laid down in *Myers v. Bethlehem Shipbuilding Corp.* (1938) 303 US 41, 82 L ed 638, 58 S Ct 459, that one who seeks relief in equity must first exhaust his administrative remedy was held inapplicable.

The argument of the appellee completely ignores these decisions and rests principally upon *United States Nav. Co. v. Cunard Steamship Co.* (1932) 284 US 474, 76 L ed 408, 52 S Ct 247, and similar cases. That

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suit was brought by a shipping company in the United States district court to enjoin a combination of shipping companies alleged to be engaged in monopolistic practices in violation of the antitrust acts, and it was held that the court was without jurisdiction since Congress had afforded an exclusive remedy in a proceeding before the United States Shipping Board under the Shipping Act of 1916, 46 USCA § 801 et seq., and the Merchant Marine Act of 1920, 46 USCA § 861 et seq. Section 14a of the statute authorized the Shipping Board, upon its own initiative, or upon a complaint to determine whether any person had violated the prohibitions of the act against rebates or unfair discrimination or the suppression of competition, and § 22 empowered the board to direct payment of reparation for injuries caused by violations of the act. Jurisdiction to enforce the orders of the board was conferred upon the district courts by §§ 29 and 30. The court followed the line of decisions with respect to the preliminary jurisdiction of the Interstate Commerce Commission over carriers by rail and held that the case was remedial under the Shipping Act, and that the matter was within the exclusive primary jurisdiction of the Shipping Board and to that extent the antitrust laws were superseded. Decisions in the kindred field of railroad transportation reach the similar result that complaints in respect to the rates and charges by carriers subject to the jurisdiction of the Interstate Commerce Commission must be submitted to the Commission

for preliminary administrative action in order to give jurisdiction to the Federal court. *Texas & P. R. Co. v. Abilene Cotton Oil Co.* (1907) 204 US 426, 51 L ed 553, 27 S Ct 350; *Keogh v. Chicago & N. W. R. Co.* (1922) 260 US 156, 67 L ed 183, 43 S Ct 47; *Terminal Warehouse Co. v. Pennsylvania R. Co.* (1936) 297 US 500, 80 L ed 827, 56 S Ct 546.

A comparison of the provisions of the Interstate Commerce Act, 49 USCA § 1 et seq., and the Shipping Act, on the one hand, with the provisions of the Federal Power Act, on the other, demonstrates that the present case is ruled by the line of decisions of which *United States Alkali Export Asso. v. United States*, *supra*, is a notable example, rather than by the cases last cited. The maintenance of uniformity of regulation and the control of the activities of an industry of national scope by a specialized body are as important in the field of electric power as in the field of transportation by rail or water; but the control of the Federal Power Commission over the power sites of the country and over the interstate transmission of electric energy is not disturbed by the retention of the jurisdiction of the courts to enforce the antitrust acts. Indeed the Federal Power Commission itself has indicated that in its opinion it possesses the power to regulate the rates for the transmission of electric energy by Penn Water in Pennsylvania to Consolidated in Maryland, and to maintain the interconnection of their facilities, even if the basic contract between them is invalid.<sup>7</sup>

<sup>7</sup> Even if it should be held that the Federal Power Act requires a preliminary determination by the Federal Power Commission in order to clothe a district court with juris-

diction to entertain a suit to revoke a license or enjoin an act of a utility in violation of the antitrust acts, it would not necessarily follow that such a determination is necessary to give

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We are referred to four proceedings conducted by the Federal Power Commission in respect to the activities of Penn Water in which its relations to Consolidated and Safe Harbor were involved and the coördination of their facilities in the transmission of electric energy were approved. The first proceeding originated on September 2, 1938, in a show cause order of the Commission to compel Penn Water to take a license under Part I of the act, and finally resulted in an issuance of the license after an unsuccessful appeal in Pennsylvania Water & Power Co. v. Federal Power Commission (1941) 74 App DC 351, 42 PUR NS 428, 123 F2d 155; see (1939) 2 FPC 61, 31 PUR NS 1; (1943) 4 FPC 426. The basic agreement of 1931 had been on file with the Commission since January 13, 1936, as a rate schedule of Penn Water under § 824d (c) of the Federal Power Act, but there was no mention of the agreement in the proceeding although the Commission in issuing the license stated that the project was best adapted to a comprehensive plan for developing the Susquehanna river for the use and benefit of interstate or foreign commerce.

The second and third proceedings involved investigations into the wholesale rates charged by Safe Harbor under a tripartite contract among Safe Harbor, Penn Water and Consolidated, which complemented the basic agreement of 1931. In the second proceeding the Commission issued an order reducing the Safe Harbor's rates (1940) 2 FPC 182, 34 PUR NS 236;

but the order was set aside on appeal in Safe Harbor Water Power Corp. v. Federal Power Commission (1941) 44 PUR NS 330, 124 F2d 800, on the ground that the jurisdiction of the Commission was dependent upon the inability of the Maryland and Pennsylvania Utility Commissions to agree, which had not been shown. This defect was cured in the third proceeding (1946) 5 FPC 221, 66 PUR NS 212, and on appeal the rate order of the Commission was upheld. Safe Harbor Water Power Corp. v. Federal Power Commission (1949) 84 PUR NS 344, 179 F2d 179. The activities of the interconnected systems were commended by the Commission as producing electric energy at the lowest cost as well as insuring reliability of service. The Commission described the provisions of the basic agreement in regard to the right of the Maryland Company to all the electric capacity of Penn Water not otherwise disposed of, the right of Penn Water to a supply of steam generated energy from Consolidated and the agreement of Consolidated to reimburse the Pennsylvania Company for its operating expenses, as well as a return on its investment. The restrictive provisions of the agreement were not mentioned and their legal validity was not discussed.

The fourth proceeding was instituted by the Commission to investigate the reasonableness and legality of the charges of Penn Water for wholesale energy sold to Consolidated under the basic agreement. Consolidated

jurisdiction to the district court in a case of this kind. The instant suit was not brought to enforce the antitrust acts, but to secure a judgment declaring that the basic agreement violates these acts and is therefore void. See

the Declaratory Judgment Act, 28 USCA § 2201. However, in view of the conclusions stated in our opinion, it is not necessary for us to determine the weight to be given to this distinction.

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and both state Commissions intervened. On January 4, 1949, the Commission filed its opinion and order reducing the rates, in *Re Pennsylvania Water & Power Co.* FPC Docket No. IT-5915, Opinion No. 173, 82 PUR NS 193. An appeal from this order is now pending in the court of appeals of the District of Columbia. Penn Water filed a petition for rehearing alleging amongst other reasons that the basic agreement was null and void in that it violated the Sherman Act and § 803(h) of the Federal Power Act, but this application was denied in an opinion filed on February 28, 1949, in *Re Pennsylvania Water & Power Co.* Docket No. IT-5915, Opinion No. 173A, 82 PUR NS 286. In this opinion the Commission referred to the economies resulting from the combined power requirements of the three companies and referred to the basic contracts in the following terms:

"By the terms of those contracts the installation of additional facilities by Penn Water is subject to approval by Baltimore Company, to assure coördinated planning and investment to meet the growing power needs of the system as a whole with resulting additional economies and consumer benefits.

"The regional integration and coördination of facilities, the resulting economies, and the utilization and conservation of natural resources thus achieved are precisely what was sought to be encouraged and fostered by the Federal Power Act and established as a part of the criterion of the public interest to be served by regulation thereunder (Cf. § 202(a), 16 USCA § 824a (a)). *If there are*

*questions as to the legality of the foundation contracts which are in litigation, as respondents' application for rehearing indicates, the validity of our order is not dependent upon the decision of those questions.* In our opinion and order we took care to leave the continuation of the operation of the integrated and interconnected system in full effect, merely changing the rates, as shown by our statement wherein we specifically stipulated that 'The present arrangement whereby sales to Pennsylvania customers are made on a firm basis on definite rate schedules whereas Baltimore Company takes what is left and assures respondents of the recovery of all proper operating expenses, depreciation, taxes, and a fair return, is the most practicable under the circumstances. That arrangement will, therefore, be continued with, however, such modifications as are necessary to accomplish the reductions mentioned above to Pennsylvania Power & Light, Philadelphia Company, Metropolitan Company and Baltimore Company.' (Italics supplied.)

"Now, by the changes referred to in Penn Water's application for rehearing, all of the carefully built-up benefits of pool design, investment, construction, and operation apparently are intended to be sacrificed by Penn Water. Penn Water's nonreceipt of steam-generated energy from outside Pennsylvania for sale to resale customers would destroy the pool economies under the established method of operation." (82 PUR NS at pp. 291, 292.)

This view of expert government authority is entitled to respect and we do not venture to say that the physical

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connection of the facilities of the two utilities, and the interchange of electric power produced by water in Pennsylvania and by steam in Maryland is not a desirable utilization of their combined resources. Nor do we undertake to gainsay the view of the Commission that even if the restrictive conditions of the basic contract are invalid, as to which the Commission expressed no opinion, it still has the duty and authority under the Federal Power Act to encourage and establish the interconnection of electrical facilities of regional districts if it finds that such action is necessary and appropriate in the public interest, and will not interfere with the lawful authority of the state Commissions in respect to the generation and distribution of electrical energy in intrastate commerce. Sections 201, 202(a) (b), 16 USCA §§ 824, 824a (a) (b).

[9] We are brought by these considerations to the contention of the Pennsylvania Public Utility Commission, an intervener in this case, that the basic agreement is invalid not only because it violates the antitrust acts but also because it disables Penn Water from performing its proper function as a public utility under the public utility laws of Pennsylvania. The regulation is based upon the provi-

sions of § 3, Art 3, of the Public Service Company Law of Pennsylvania, approved July 26, 1913, Pamphlet Laws 1374,<sup>8</sup> which was in effect when the basic agreement was executed in 1931 and also upon §§ 202(d) and 202 (e) of Public Utilities Law, approved May 28, 1937, 66 Purdon's Pennsylvania Statutes Ann § 1101 et seq. which are set out in the margin.<sup>9</sup>

There can be no doubt that the freedom of action of Penn Water as a public utility of the state has been and is restricted by the provisions of Articles IV and V of the basic agreement whereby Penn Water is required to get the approval of Consolidated before making any agreement for the purchase or sale of electric power or making any investment or disposition of any property in excess of \$50,000. In other words, Penn Water's power to propose prices and improvements and extend its services has been surrendered to Consolidated, and there can be no doubt that this surrender amounts to a transfer pro tanto of its powers and franchises to the Maryland utility without approval of the Pennsylvania Commission in violation of the Pennsylvania statute.

Indeed such restrictions upon the freedom of a public utility cannot be sustained irrespective of statutory

<sup>8</sup> Section 3. "Upon like approval of the Commission first had and obtained, as aforesaid, and upon compliance with existing laws, and not otherwise, it shall be lawful— . . . .

"(c) For any public service company to sell, assign, transfer, lease, consolidate, or merge its property, powers, franchises, or privileges, or any of them, to or with any other corporation or person."

<sup>9</sup> Section 202. "Enumeration of acts requiring certificates. Upon approval of the Commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, and not otherwise, it shall be lawful . . . .

"(d) For any public utility to dissolve, or to abandon or surrender, in whole or in part, any service, right, power, franchise, or privilege . . . .

"(e) For any public utility, except a common carrier by railroad subject to the Interstate Commerce Act, to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including a consolidation, merger, sale, or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service . . . ."

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prohibition. It was so held in *Gibbs v. Consolidated Gas Co.* (1889) 130 US 396, 32 Led 979, 9 S Ct 553, in considering a contract between two competing Baltimore gas companies which was made in 1884 prior not only to the Pennsylvania Public Utility Acts but also the Sherman Act of 1890. The companies agreed to sell their product at a fixed price which could not be changed except by mutual consent except that the larger company in case of competition on the part of another company might reduce its price. They also agreed that one of the companies should lay no more pipes for the supply of gas. In denying recovery upon the contract because of invalidity, the Supreme Court said in 130 US at pp. 410, 411, 9 S Ct at p. 558:

"It is also too well settled to admit of doubt that a corporation cannot disable itself by contract from performing the public duties which it has undertaken, and by agreement compel itself to make public accommodation or convenience subservient to its private interests.

"Where," says Mr. Justice Miller, delivering the opinion of the court in *Thomas v. West Jersey R. Co.* (1880) 101 US 71, 83, 25 L ed 950, 'a corporation, like a railroad company, has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the

corporation from performing those functions, which undertakes without the consent of the state to transfer to others the rights and powers conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the state, and is void as against public policy.'"

See also *Central Transp. Co. v. Pullman's Palace Car Co.* (1891) 139 US 24, 48, 51, 35 L ed 55, 11 S Ct 478; *United States Teleph. Co. v. Central U. Teleph. Co.* (1913) 202 Fed 66, 72, 73.

One of the most important duties of a public utility, inherent in its franchise to serve the public, is the duty to take the initiative in proposing reasonable rates and rendering adequate services, taking into account changing conditions; and the utility is not relieved from this duty because its activities are subject to governmental regulation, for a regulatory Commission is not clothed with the responsibility or qualified to manage the utility's business.<sup>10</sup> The decisions in respect to this matter, both before and after the establishment of regulatory Commissions, are in accord with the principles laid down in *Gibbs v. Consolidated Gas Co. supra*. See *Arizona Grocery Co. v. Atchison, T. & S. F. R. Co.* (1932) 284 US 370, 384, 76 L ed 348, 52 S Ct 183; *Georgia v. Pennsylvania R. Co.* (1945) 324 US 439, 458-460, 89 L ed 1051, 59 PUR NS 132, 65 S Ct 716; *United States Teleph. Co. v. Central U. Teleph. Co.*

<sup>10</sup> "It must never be forgotten that while a state may regulate, with a view to enforce reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership." *Missouri ex rel. Southwestern Bell Teleph.*

*Co. v. Public Service Commission*, 262 US 276, 289, 67 L ed 981, PUR 1923C 193, 43 S Ct 544, 31 ALR 807. See also *Northern Pennsylvania Power Co. v. Public Utility Commission* (1938) 132 Pa Super Ct 178, 24 PUR NS 443, 200 Atl 866; *Id.* (1939) 333 Pa 265, 27 PUR NS 233, 5 A2d 133.

PENNSYLVANIA WATER & P. CO. v. CONSOL. GAS, E. L. & P. CO.

*supra*, 202 Fed at pp. 71, 72; see also *Magaha v. Hagerstown* (1902) 95 Md 62, 51 Atl 832, 93 Am St Rep 317. The conclusion is inescapable that the contractual restrictions upon the power of Penn Water to perform its functions as a utility under the Pennsylvania statute are invalid.

This conclusion is not avoided by the fact that Penn Water is a public utility under Part II of the Federal Power Act, and subject as such to the regulation of the Federal Power Commission. There is, however, a limitation upon the jurisdiction of the Federal Power Commission over public utilities subject to Part II of the Federal Act, §§ 201 to 209, which is set forth as follows in § 201(b), 16 USCA § 824(b), as follows: "(b) The provisions of §§ 824-824h of this title shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a state or state Commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a state line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in §§ 824-825r of this title, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." This language has been held to mean what it says, Connecticut

*Light & P. Co. v. Federal Power Commission* (1945) 324 US 515, 527, 89 L ed 1150, 58 PUR NS 1, 65 S Ct 749; cf. *Jersey Central Power & Light Co. v. Federal Power Commission* (1943) 319 US 61, 87 L ed 1258, 48 PUR NS 129, 63 S Ct 953; and hence there is a field in which the Pennsylvania Utility Commission is qualified to act. The evidence in this case shows that Penn Water is engaged in the production and local distribution of electrical energy to local utilities which distribute power to consumers in Pennsylvania, and in respect to this business, it seems clear that the state Commission possesses regulatory power. The restrictive provisions of the basic agreement apply to all of the activities of Penn Water, including not only the transmission and sale of electric energy interstate but the local distribution within the state of Pennsylvania, and the surrender to Consolidated of Penn Water's duties obviously affects its local as well as its interstate activities. Viewed in this light it is clear that the contention of the Pennsylvania Commission as to the invalidity of the basic agreement is well founded.

It is not our function in this case to decide how far the activities of Penn Water and Consolidated under the basic contract are subject to the regulations of the Federal Power Commission or the Pennsylvania Public Utility Commission, either or both. It has been held that the purchase by one Pennsylvania utility of the securities of another must be approved by both Commissions. See *Northern Pennsylvania Power Co. v. Public Utility Commission* (1938) 132 Pa Super Ct 178, 24 PUR NS 443, 200

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Atl 866, Id. (1939) 333 Pa 265, 27 PUR NS 233, 5 A2d 133. It may well be, although the present arrangement between the Maryland and Pennsylvania utilities is invalid for the reasons set forth, that an interconnection of facilities and an interchange of electrical energy between them may be continued by some method that would meet with the approval of the appropriate regulatory authority and will not offend either the antitrust laws or the utility laws of Pennsylvania. That question is not before us. We hold merely that the benefits that have heretofore flowed from the basic contract do not protect it from the impact of the Sherman Act; and that the contract is invalid since it violates that statute and disables Penn

Water from performing its proper function as a public utility under the public utility laws of Pennsylvania; and that the district court had jurisdiction in the premises.

In view of these conclusions we have not found it necessary to consider the contentions of Penn Water that the basic agreement was beyond the powers of Penn Water under the Pennsylvania law, or that Penn Water has properly terminated the agreement because of breaches thereof by Consolidated.

The case will be remanded to the district court with instructions to enter a declaratory judgment in accordance with this opinion.

Reversed and remanded.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Raymond A. Yokes et al. Doing  
Business As New Kensington  
Motor Express

Application Docket No. 35466, Folder 5  
September 25, 1950

**P**ETITION to rescind order of the Commission granting a motor carrier certificate; dismissed.

*Certificates of convenience and necessity, § 11 — Commission powers — Violation of condition.*

1. The grant or refusal of a certificate where there has been proof of a violation of a condition is an administrative question to be decided by the Commission, p. 56.

*Certificates of convenience and necessity, § 84 — Violation of condition — Mistake — Fitness of applicant.*

2. A violation of a certificate condition upon the mistaken belief that a required insurance certificate had been filed is a technical, rather than a

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substantial, violation which is not of such character to render a motor carrier applying for a certificate unfit, p. 56.

*Certificates of convenience and necessity, § 163 — Application — Reinstatement of revoked certificate— Public convenience and necessity.*

3. An application for reinstatement of a certificate revoked because of a technical violation of a condition is not a new application, and where there has been continuous operation of the service declared necessary in the original proceeding, an allegation that public convenience and necessity has to be shown is a technical, rather than a substantial, objection and is without merit, p. 56.

By The COMMISSION: This matter comes before us on the petition of protestants, Harrison-Shields Transportation Lines, Inc., Darby Transfer and Storage, Debolt Transfer, John Benkart Sons Company, H. Shear Trucking Company, Harvey's Local Express, J. Kenny Transfer, Edward Zurcher, A. J. Hubert, O. K. Heilman, Paul Kress, trading as Pittsburgh-Verona & Oakmont Express, Lightning Local Express Company, Leaman Transportation Company, E. Brooke Matlack, Coastal Tank Lines, J. A. Grimm, J. W. Sproul, and E. E. Schaney Transfer, for rescission of our order of June 12, 1950, and the answer to the petition filed by applicant.

The applicant had previously held certificates of public convenience for the rights sought in the instant application. The applicant by this application sought to reinstate the rights applied for and granted at A. 35466, Folder 4, which was later dismissed because the applicant had not submitted evidence of compliance with the Commission's insurance requirements. The compliance order at A. 35466, Folder 4, was issued on December 28, 1948, and the order dismissing the application was entered on June 23, 1949. The present application was filed August 2, 1949, and hearings were held in the matter on November

29, 1949, and January 18, 1950. The sole testimony taken at the hearings was that of the applicant and his insurance agent. The applicant testified that he gave the order for the delivery of the insurance certificate to his agent upon receipt of the compliance order of December 28, 1948, and he had received an insurance certificate made out in the name of "F. C. Grant." The record did not disclose what had been done with this insurance certificate. The agent of the insurer having been advised for the first time that the insurance certificate was not properly filed, when the applicant received notice of the dismissal order of June 23, 1949, then checked the insurance status and made out a new insurance certificate, assigning the existing policy in the name of F. C. Grant to the applicant in its proper name and forwarded it to the Commission. However, it was returned with the statement that it would not be accepted because the application had already been dismissed. The applicant, in order to correct the situation, was then required to file the present application.

At the hearings, in addition to the testimony with regard to the insurance certificate, the applicant testified that he had been continuously operating from the time of entry of the compliance order to the date of the hearings.

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

The petition for rescission of the order averred that the order was improperly entered because it was based upon "wilful and deliberate violations of the Public Utility Law" in view of the fact that the applicant had rendered service from the time of the compliance order to the hearings without having a proper insurance certificate and therefore, of course, no certificate of public convenience, and also that in view of the fact that the application was a new application and no testimony of necessity was presented in connection therewith, the order should have dismissed the application for want of necessity.

The answer to the petition averred that the operations were continued under the impression that the insurance certificate had been properly filed and that the operations were therefore legal, and further averred that the applicant had testified as to the necessity for service and that this was sufficient in view of the fact that the rights sought were exactly the same as had been previously granted under the compliance order dated December 28, 1948, and continuously exercised since then.

[1] The principal point made by the protestants seems to be that because of the "violations" on the part of the applicant, in that the operations were continued without the certificate having actually been granted and upon the basis only of the compliance order, are such that the application should have been dismissed. We held, in *Application of Orr Transfer & Distributing Company* at Application Docket 53752, Folder 3 (1948), that the grant or refusal of a certificate, where there has been proof of viola-

tion, is an administrative question to be decided by the Commission. Also in *Highway Express Lines v. Public Utility Commission* (1947) 161 Pa Super Ct 98, 54A2d 109, the same principle was enunciated, the court there saying at p. 100:

"Even if he had violated the Public Utility Law by operating without a certificate, we agree with the Commission that this type of violation does not, ex necessitate, compel a refusal of the instant application. No question of human safety was involved in the past dereliction and it was for the Commission to determine whether the prior violation rendered him unfit."

[2] The alleged violations in this case merely were based upon a mistaken belief that the insurance certificate had been properly filed and certainly cannot be said to be of a character such as to render this applicant unfit. Our order of June 12, 1950, wherein, after reviewing all of the circumstances with regard to the insurance, we stated: "In such circumstances we think the failure of the applicant to comply with the order of the Commission in regard to insurance is technical rather than substantial, and should not prejudice this application for similar rights," was a proper disposition of that question.

[3] With regard to the second point in the petition, namely, that this was a "new" application and therefore evidence of necessity, meaning of course the testimony of shipper witnesses, should have been presented, is without merit. In our order of December 28, 1948, we found that there was necessity for the service proposed by the applicant, and the applicant's testimony on the new application was simply a

## RE YOKES

request for reinstatement of the same rights, and was to the effect that he had been in continuous operation and had provided the service that had been found necessary under the order of December 28, 1948, up to the date of hearing. Under the circumstances this objection should also be consid-

ered a technical rather than a substantial objection, and is without merit.

Accordingly, the petition here considered must be dismissed; therefore,

It is *ordered*: That the petition of protestants for rescission of the order of June 12, 1950, is dismissed.

### COLORADO DISTRICT COURT, EL PASO COUNTY

## City of Colorado Springs

v.

## Colorado Public Utilities Commission (A. L. Musick, Intervenor)

Civil Action No. 28659  
September 11, 1950

**A** PPEAL from Commission order holding municipal plant furnishing extraterritorial service to be subject to its jurisdiction; affirmed.

#### *Public utilities, § 57 — Municipal plant — Extraterritorial service.*

1. A municipal water plant holding itself out to serve water for domestic uses indiscriminately to residents without the corporate limits, in an area described as the suburbs or fringe territory and in areas close to its pipelines, is a public utility subject to Commission jurisdiction as to such extraterritorial service, p. 58.

#### *Municipal plants, § 18 — Extraterritorial service.*

2. A municipal water plant may furnish extraterritorial service where there is a surplus and where the city's citizens are not injured thereby, such service being incidental to the main purpose of furnishing water service to the city's own inhabitants, although the city may not have for its primary object the furnishing of utilities to consumers outside of its corporate limits, p. 58.

#### *Public utilities, § 21 — Municipal plant — Effect of charter powers.*

3. Whether or not a municipality is a public utility depends upon what it actually does rather than what its charter says it may do or what the law says it may not do, p. 58.

## COLORADO DISTRICT COURT

MEIKLE, J.: This cause coming on to be tried to the court on the 8th day of June, 1950, upon the issues formed by the pleadings herein, the trial being upon the record of the hearing before the Public Utilities Commission of the state of Colorado heretofore certified to this court, the petitioner appearing by F. T. Henry and Louis Johnson, its attorneys; respondents appearing by John W. Metzger, attorney general of the state of Colorado, by Paul M. Hupp, assistant attorney general, and the complainant and intervenor appearing by Messrs. Bennett & Heinicke, his attorneys.

The court having heard the arguments of counsel, this matter was taken under advisement until this date.

The court now having examined the records and files herein and having read the evidence introduced upon the hearing before the Commission and the briefs submitted by the parties, and being fully advised in the premises, finds:

[1] 1. That there is competent evidence to support the findings of the Public Utilities Commission that the petitioner, the city of Colorado Springs, has, since about the year 1907 and continuously thereafter, held itself out to serve water for domestic uses indiscriminately to residents without the corporate limits of said city in an area described as the suburbs or fringe territory and in areas in close proximity to the pipelines and service lines of said city; and that the city of Colorado Springs is, therefore, a public utility and subject to the jurisdiction of the Public Utilities Commission of the state of Colorado as to such service outside its corporate limits.

2. That the property of the com-

plainant and intervenor, A. L. Musick, described in complainant's complaint before the Commission herein is within the areas heretofore and now being served with water for domestic use by said city.

3. That said Commission has regularly pursued its authority; that the order and decision of the Commission violates no right of the petitioner under the Constitution of the United States or of the state of Colorado; and that the order of the Commission is just and reasonable and its conclusions are in accordance with the evidence.

[2, 3] The attorney for the city closes his brief with a statement "that his Honorable Commission should refuse to consider the matter presented by the complaint on the grounds that the same is not within the scope of the jurisdiction of the Commission . . . upon the premise that the city's assistance in furnishing water to the fringe population, within the attendant limitations and conditions, was never intended as a public utility operation and the city would be legally prohibited from assuming the servitude of a utility undertaking in furnishing water to the public outside its limits, and such attempted obligation on its part would be *ultra vires*."

It is true that a city may not have for its primary object the furnishing of utilities to consumers outside of its corporate limits. Such an objective would be *ultra vires*. However, it is also true that a city may serve outside consumers where there is a surplus and where its own citizens are not injured thereby, such service being incidental to the main purpose of serving its own inhabitants.

## COLORADO SPRINGS v. COLORADO PUB. UTIL. COM.

In this case there is no evidence that the city has at any time furnished water to outside consumers except out of surplus, with the possible exception of furnishing water to Colorado City, where that agreement to furnish depended upon a contract for a right of way for its pipelines through said Colorado City. If, to furnish water to outside consumers other than out of surplus is ultra vires, there is no reason to assume that the Public Utilities Commission would or could compel the city to do an ultra vires act. If the city may furnish surplus water indiscriminately to the public or to a portion of the public outside of its corporate limits, as in this case, there is no reason why the Commission should not have jurisdiction to regulate and control it as a public utility in render-

ing such service. In determining whether or not a municipality is or is not a public utility the important thing is not what its charter says it may do or what the law says it may not do but what it actually does.

Wherefore, it is *ordered and adjudged* that the findings and order of the Public Utilities Commission of the state of Colorado in this case be, and the same are hereby, approved and affirmed.

It is *further ordered* that a motion for new trial be dispensed with and that a writ of error may be taken to the supreme court from this judgment by any party to this proceeding in the same manner and with the same effect as writs of error are taken from judgments of the district court in other cases.

## MAINE PUBLIC UTILITIES COMMISSION

### Re Citizens Utilities Company

U. 2000

September 27, 1950

**A**PPPLICATION for Commission approval of issuance of securities by foreign public utility corporation; denied.

*Security issues, § 35 — Jurisdiction of Commission — Foreign corporation.*

The Commission does not have jurisdiction over the issuance of securities by a foreign public utility corporation.

**APPEARANCES:** Joseph C. Briggs, Greenwich, for petitioner.

**By the COMMISSION:** Citizens Utilities Company is a corporation organized under the laws of the state of Delaware and has its principal office

at Greenwich, Connecticut. It owns and operates utility properties of various kinds in several states in the union but is particularly engaged in the manufacture, distribution, and sale of manufactured gas in Bangor and the

## MAINE PUBLIC UTILITIES COMMISSION

near-by towns in Penobscot County, Maine.

On November 29, 1948, Citizens Utilities Company acquired all the stock of Bangor Gas Company, a Maine corporation which was engaged in the gas business as a public utility in and around Bangor, Maine. Simultaneously with the acquisition of the stock, Bangor Gas Company was merged with the Citizens Utilities Company, Citizens assuming a mortgage given by Bangor Gas to Title Guaranty Trust Company of New York. This mortgage covered all the company's property used in the manufacture, distribution, and sale of manufactured gas in the state of Maine.

Citizens Utilities Company has filed application with this Commission requesting an order authorizing and approving the sale by Citizens Utilities Company to Metropolitan Life Insurance Company of \$2,500,000 principal amount of first mortgage collateral trust, 3½ per cent bonds, series of 1980. With the proceeds of the sale of these bonds, Citizens Utilities Company proposes to pay a bank loan of \$1,500,000, redeem Bangor Gas Company first mortgage 4 per cent sinking-fund bonds, series due 1971, in the aggregate amount, including call premium of \$465,920 and retire the company's first mortgage and collateral trust bonds, 4 per cent series due 1972, in the aggregate amount of \$520,000. The balance of approximately \$14,000 will be used for the payment of costs involved in the several matters.

It is to be noted that the prayer of the petitioner is for an order of this Commission "authorizing and approv-

ing the sale of bonds." The question arises, has the Commission jurisdiction to authorize and approve the sale of these bonds, Citizens Utilities Company being a foreign corporation organized under the laws of the state of Delaware, with its principal office in Connecticut? Such jurisdiction as this Commission has, is to be found in § 42 of Chap 40 of the Revised Statutes of 1944. A history of this statute reveals the following:

Originally § 37, Chap 55, Revised Statutes of 1916 read: "Any public utility now organized and existing, and doing business in the state or hereafter incorporated under and by virtue of the laws of the state of Maine, may issue stocks, bonds . . ." after obtaining the approval of this Commission.

In 1922, this Commission had before it the case of the New England Telephone and Telegraph Company which company was a foreign corporation and although the Commission assumed jurisdiction to approve the issue of the bonds, Chairman Gurney dissented and it became the practice of the Commission to act in accordance with Chairman Gurney's dissent, rather than follow the majority opinion. The case is reported in PUR 1923A 795.

In 1927, Chap 82 of the laws of that year changed the wording of § 35 previously quoted, to read as follows: "Any public utility now organized and existing or hereafter incorporated under and by virtue of the laws of the state of Maine and doing business in the state may issue stocks, bonds . . ." with the approval of this Commission.

It would seem, therefore, that fol-

## RE CITIZENS UTILITIES CO.

lowing the opinion of Chairman Gurney and the action of the Maine legislature, together with the practice of the Commission, that for the Public Utilities Commission of this state to exercise jurisdiction over the issue of securities it is necessary for the utility first, to be organized under Maine laws and, secondly, to be doing business in the state.

In view of the foregoing, it is the

opinion of this Commission that under § 42 of Chap 40 of the Revised Statutes of 1944, it does not have jurisdiction in the instant case to authorize and approve the sale of \$2,500,000 principal amount of bonds by Citizens Utilities Company to Metropolitan Life Insurance Company. For the foregoing reasons, it is, therefore,

*Ordered, adjudged, and decreed* that said application be denied.

## GEORGIA PUBLIC SERVICE COMMISSION

### Re Walker County Telephone Company

File No. 19395, Docket No. 17-U

July 24, 1950

**A**PPPLICATION for authority to increase telephone rates upon conversion to automatic dial operation; granted.

*Expenses, § 35 — Extraordinary retirements — Conversion to dial telephone equipment.*

1. Amortization of extraordinary retirement of telephone equipment over a 10-year period upon conversion to automatic dial operation was considered proper, p. 62.

*Revenues, § 2 — Future estimates — Telephone company.*

2. Application of proposed telephone rates to the number of stations was considered proper to arrive at the pro forma exchange revenue of a telephone company, p. 62.

(McDONALD, Commissioner, dissents.)

**APPEARANCES:** A. B. Pogue, Consultant, and E. P. Burney, Vice President and General Manager, for the company; Bland Goodwin, Attorney, and H. H. Cabaniss, Auditor, for the Commission.

By the COMMISSION: Walker County Telephone Company on June

5, 1950, filed an application with the Commission requesting authority to increase rates for exchange telephone service upon conversion of its Lafayette, Georgia, exchange to automatic dial operation. This matter was assigned for hearing on July 13, 1950, at which time it was heard. The Com-

# GEORGIA PUBLIC SERVICE COMMISSION

mission directed the company to publish notice of the hearing in two issues of the newspaper having general circulation in Walker county, Georgia, and proof of publication of the notice as required was submitted to the Commission. No one appeared at the hearing in opposition to the application.

The present and requested rates as set forth in the company's application are as follows:

Class of Service	Rates per Month	
	Present	Proposed
<b>Business,</b>		
1-Party Line .....	\$5.25	\$6.00
2-Party Line .....	4.50	5.00
4-Party Line .....	3.50	4.00
Extension .....	1.50	1.75
<b>Residence,</b>		
1-Party Line .....	\$3.25	\$3.75
2-Party Line .....	2.75	3.25
4-Party Line .....	2.25	2.75
8-Party Line .....	2.00	2.25
Extension .....	1.00	1.25
PBX Switchboard .....	10.50	\$10.50
PBX Trunks .....	7.88	9.00
Extension Bells .....	.50	.50

Class of Service	Rates per Month	
	Present	Proposed
<b>Rural, Multi-party, Company-owned</b>		
<b>Business,</b>		
0-2 Miles beyond Exchange Limits .....	\$3.50	\$3.50
2-4 Miles .....	3.75	3.75
4-6 Miles .....	4.00	4.00
<b>Residence,</b>		
0-2 Miles .....	\$2.75	\$2.75
2-4 Miles .....	3.00	3.00
4-6 Miles .....	3.25	3.25
Each additional 2 miles 25¢ extra charge		
<b>Subscriber-owned Service Station</b>		
Minimum \$6.00 per line, each station over at rate of \$1.00 per month	\$6.00	\$6.00
Exchange Area Service extended to rural area, Business or Residence subject to 40¢ per ½ mile beyond Base Rate Area.		
Base Rate Area is the City Limits of Lafayette, Georgia, as of June 1, 1950.		
All service to be automatic dial with full selective ringing to all subscribers.		

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## Service Connection Charges

Class of Service	Present	Proposed
Business Main Station and Outside Move .....	\$2.00	\$3.50
Residence Main Station and Outside Move .....	2.00	3.00
Business Extension and Inside Move .....	2.00	2.00
Residence Extension and Inside Move .....	2.00	1.50

Mr. A. B. Pogue, private consulting engineer employed by the company, testified that in view of the very substantial amount of new capital required for conversion to automatic dial operation, it would be necessary to request higher rates, for the company to realize adequate earnings in order to attract this new capital. He introduced an exhibit showing (1) the schedule of present and proposed rates; (2) revenue from proposed increase under proposed rates; (3) revenue and expenses as affected by proposed rates; (4) return on investment under proposed rates, and (5) an appraisal of telephone plant and equipment.

[1, 2] Mr. Pogue testified that his appraisal of the property shows the gross value of plant and equipment to be \$230,570 which, less reserve for depreciation in the amount of \$26,322, would give a net plant value of \$204,248. Adding to this cash working capital in the amount of \$3,309, plus materials and supplies in the amount of \$2,383, results in net plant value of \$210,540. To this Mr. Pogue has added \$5,600 which he alleges will be the expense of handling the new financing of \$140,000.

Further testimony was given to the effect that the number of stations now in service was 1,056 with an additional 48 held applications for

## RE WALKER COUNTY TELEPH. CO.

service, making a total of 1,104 stations. The application of the proposed rate increases to the 1,104 stations would result in an annual increase in revenue of \$7,323. He further testified that the company dispensed with the services of eight operators whose combined annual salaries amount to \$14,275, that an additional commercial employee would be required at an annual salary of \$3,000, and that additional annual expense of \$1,552 would be realized to maintain the new dial telephones. The witness also testified that annual depreciation expense would increase in the amount of \$3,429 due to the application of a composite rate of 4 per cent to added depreciable plant. Mr. Pogue further asked for permission to amortize extraordinary retirement of \$8,377 over a period of ten years at \$837.70 per year.

The above adjustments in expenses, together with an annual amount of \$1,944 which represents the loss to the company in Class "B" Toll compensation, and additional uncollectibles in the amount of \$80 per year results in an annual decrease in what Mr. Pogue terms operating expenses of \$1,032.

Mr. Pogue's exhibit sets forth revenues for 1950 annualized on the basis of March and April revenues as \$55,394, and operating expenses for the same period as \$46,204, resulting in net income before income taxes in the amount of \$9,190. By adding increased revenues from proposed rate increase in the amount of \$7,323, the resulting net income before income taxes would be \$16,513 before giving effect to adjustments of expenses set

out hereinabove in the amount of \$1,032, making the net income before income taxes in the amount of \$17,345.

According to Mr. Pogue's estimates, income taxes will amount to \$3,162 after giving effect to interest deduction of \$5,600, which amount represents annual interest of 4 per cent on a loan of \$140,000 which the company states would be required to finance the new equipment. This results in net income of \$14,303 which is a rate of return of 6.6 per cent on net value of \$216,140, according to Mr. Pogue.

Whereas the company has added the increase in revenues arrived at by applying the increase in proposed rates to number of stations to a 12-month period, the Commission considers it proper to apply the proposed rates to the number of stations to arrive at the pro forma exchange revenue. This amount is estimated to be \$43,401 to which has been added an amount of \$15,577.40 which represents toll revenues for March and April of 1950 annualized. Miscellaneous revenues are estimated at \$1,596.58 and uncollectibles are calculated as one-half of one per cent of gross revenues or \$303. This results in total pro forma operating revenues of \$60,271.

The adjustments as testified to by company witness are considered proper with exception of the item of uncollectibles in the amount of \$80 which is given effect to in the above figure of \$303.

The following statement sets forth the pro forma operation of the company as estimated by the Commission:

# GEORGIA PUBLIC SERVICE COMMISSION

<b>Operating Revenues</b>	
Exchange .....	\$43,401.00
Toll .....	15,577.40
Miscellaneous .....	1,596.58
Uncollectibles .....	(303.00)
<b>Total Operating Revenues</b>	<b>\$60,271.98</b>
<b>Operating Expenses</b>	
March and April, 1950 (annualized) .....	\$46,204.00
<b>Adjustments</b>	
Loss of Schedule "B" commissions .....	\$1,944
Additional Commercial Employee .....	1,560
Automatic Equipment Man .....	3,000
DSA Service .....	840
Additional Maintenance Expense .....	1,552
Elimination of Operators' Salaries .....	(14,275)
Added Depreciation Expense .....	3,429
Extraordinary retirements .....	838
	<b>(1,112.00)</b>
<b>Total Operating Expenses ..</b>	<b>\$45,092.00</b>
<b>Net Income before Income Taxes ..</b>	<b>15,179.98</b>
<b>Income Taxes .....</b>	<b>2,474.00</b>
<b>Net Income .....</b>	<b>\$12,705.98</b>

The net income of \$12,705.98 appears adequate to provide a reasonable return on the company's investment and the rates as requested do not appear excessive for an automatic exchange of this size and it is the opinion of the Commission that the application should be granted as filed.

MCDONALD, Commissioner, dissenting: The record in this case, as well as the summarization in the foregoing order, leaves you as completely unanchored as Uncle Remus' "Lost Soul, the Jack-O-Lantern." The wholly inadequate premise for the entire calculation is based on two months' actual operating expenses and revenues hypothetically extended

to a twelve months' basis, and a considerable part of the rate base represents merely an engineer's estimate. I fail to see where this conversion can result in benefit to subscribers of the company or to the company itself. The subscribers will unquestionably lose much in information service and personal attention afforded in common battery service, although they must pay greatly increased rates for automatic dial service controlled through DSA service out of the Chattanooga exchange. The company states that it will realize savings in the amount of \$14,275 through the release of eight telephone operators, but it admits that this will be offset by the salary of an additional necessary commercial employee in the amount of \$1,560, and additional dial technician with the salary of \$3,000, an additional expense of \$1,552 in the maintenance of dial telephones, an increase in income taxes of \$3,162, and an increase in depreciation expense of \$3,429. A further depreciation expense for extraordinary retirements in the amount of \$837.70 annually added to the sum of \$840 which the company must pay to Southern Bell for DSA service rendered from the Chattanooga exchange and added to the loss of \$1,944 of Schedule "B" compensation upon conversion making a total increase in operating expenses of \$16,324.70 or \$2,049.70 more than the claimed savings. Additionally there is no basis or precedent that would justify the amortization of the extraordinary retirement of \$8,377 over a period of ten years to be charged against operating expenses.



# Industrial Progress

*A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.*



## Commonwealth Edison Orders Two More Units

Two more generating units totalling 210,000 kilowatts have been ordered for electric power plants serving Chicago and Northern Illinois, it is announced by Charles Y. Freeman, chairman of Commonwealth Edison Company.

Installation of this additional capacity to the Edison system is scheduled for completion in 1953. One unit of 150,000 kilowatts has been ordered for the Edison company's new Ridgeland station. The second unit, of 60,000 kilowatts capacity, is for the Public Service Company of Northern Illinois station at Dixon.

"The Ridgeland installation will complete the capacity for which that station was designed, making it the largest in the Edison system," said Mr. Freeman. "Ridgeland then will have four units, each of 150,000 kilowatts, or a total of 600,000 kilowatts. The station when completed will be large enough to serve a city of more than 1,000,000 population.

"The Commonwealth Edison system today has capacity of 2,802,000 kilowatts, which is nearly 70 per cent greater than in 1929. With additional facilities under construction and now on order, capacity will exceed 3,400,000 kilowatts or double that of twenty years ago."

Mr. Freeman, on the occasion of the dedication of Ridgeland station recently, announced that the system's postwar construction program now involves the expenditure of more than \$750,000,000. In excess of \$400,000,000 already has been spent for electric and gas expansion purposes and the cost of construction for the next four years is estimated at more than \$350,000,000.

## Importance of Coal Handling Systems Intensified

THE importance of the coal handling system in power plant design has been intensified by economic and social trends and, in a large measure, by progress in over-all plant design, Frank W. Lovett, engineer, power plant equipment, Link-Belt Company, Chicago, declared recently at the 1950 annual meeting of The American Society of Mechanical Engineers.

Mr. Lovett, who has long specialized in the design and application of power plant coal handling equipment, listed among today's problems, handling coal at larger hourly rates to serve the greater generating capacity of individual stations; the currently poorer grades of coal; providing larger reserve coal storage because of uncertainties of the coal supply; higher labor costs and the difficulty of obtain-

ing men at any price; effective means of controlling dust to provide better housekeeping.

In his talk, Mr. Lovett covered all phases of coal handling from unloading station to power plant bunker and furnace, and to and from reserve storage pile.

## Southern Coal Acquires Mines In Illinois and Indiana

TWO-THIRDS of the shares of the Northern Illinois Coal Corporation have been sold to Southern Coal Company, Inc., according to a recent announcement. Both companies are headquartered in Chicago.

Southern Coal Company, a sales organization, which has been in business for 54 years, ships coal from mines located in Kentucky, Illinois, Alabama, West Virginia, Arkansas, and Oklahoma. The Northern Illinois Coal Corporation's group of mines includes the Sunlight and Tecumseh operations in Indiana, and the Seminole and Wilmington mines in Illinois, which have a combined annual production of more than 4,000,000 tons.

## Plans to Increase Capacity of Gas Transmission System

KANSAS-NEBRASKA NATURAL GAS COMPANY, Inc., of Phillipsburg, Kansas, has applied for authorization to increase the capacity of its natural gas transmission system from approximately 146,000,000 to about 164,200,000 cubic feet daily. Estimated cost of the project is \$5,201,331.

## Kansas City Pwr. & Lt. Orders New 99,000 KW Unit

ORDERS have been placed by Kansas City Power & Light Company for a new 99,000-kilowatt steam-electric generating unit to be installed at its Hawthorn station in the Northeast industrial district, it was announced recently by H. B. Munsell, president. The in-

(Continued on page 34)

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stallation, which will deliver initially 650 million kilowatt hours annually and cost approximately \$16,000,000, is scheduled for completion in April, 1953.

The new unit will add 75 per cent to the 132,000-kilowatt generating capacity of two units now under construction at Hawthorn. Local power production will be increased by 70 per cent over the present supply when the three units are in operation.

### Chart Covers Building Maintenance Problems

OF interest to every plant and building maintenance superintendent is the new "Maintenance Checking Chart" published by United Laboratories, Inc., 16801 Euclid avenue, Cleveland 12, Ohio. This chart lists many common building maintenance problems and recommends a solution for each. It lists over 100 products and processes for maintenance of floors, roofs, interior and exterior walls, waterproofing, special paints, etc.

Copies of the chart will be mailed free upon request.

### Booklet on Steel Tubing

THE BABCOCK & WILCOX TUBE COMPANY offers a new bulletin, "Descriptive Terms—Steel Tubing." This 20-page, pocket-size booklet presents brief descriptions of terminology used in the manufacture and applica-

tion of steel tubing. As the meaning of many of the terms used by the tubing industry is more specific than the ordinary definition of the term, the booklet will be of interest and value to anyone connected with the production of items using tubing. Known as bulletin TB-335, it is available on request to The Babcock & Wilcox Tube Company, Beaver Falls, Pennsylvania.

### Conn. Lt. & Pwr. Engages Chas. T. Main to Make Study

R. H. KNOWLTON, president of The Connecticut Light and Power Company, announced recently that Charles T. Main, Inc., has been engaged to restudy the possibilities of a future hydroelectric project on the Housatonic river above Lake Zoar, which is the lake formed by the company's Stevenson dam. The same engineering firm made a study of the area for the power company in 1926, but the project was not feasible at that time. One of the principal obstacles then to an economically sound hydro development at this location was the cost of relocating the Litchfield branch of the New Haven Railroad which crossed the Housatonic near Southville and which would have been flooded by the project. The branch railroad line was discontinued a short time ago, thereby paving the way for further consideration of the hydroelectric development.

The Connecticut Light & Power Company  
(Continued on page 36)

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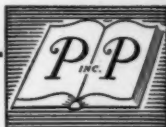
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is now completing the installation of a 66,000 kilowatt steam generator at its Devon plant, which will provide ample capacity for estimated load increases during the next two to three years. It has also recently ordered an additional 75,000 kilowatt unit which is scheduled for operation in 1953, so that in all likelihood no further capacity additions need be planned before 1954. So far, the company has spent about \$78,000,000 since V-J Day in modernizing its facilities and increasing its power supply capacity. It is estimated that the cost of constructing a hydroelectric plant to utilize the flow of the Housatonic river between New Milford and Lake Zoar will amount to between ten and fifteen million dollars.

### Diesel Engines Described In New Baldwin Booklet

**B**ALDWIN Series 700 diesel engines are described in a new 4-page bulletin, No. 320, just issued by The Baldwin-Lima-Hamilton Corporation, Philadelphia 42, Pa. These engines are four-cycle with a 17-inch bore, 20-inch stroke, and a speed range from 257 to 375 rpm. They have horsepower ratings ranging from 710 hp. for 6-cylinder, normally aspirated, to 2,080 hp. for 8-cylinder supercharged engines.

Chief use is in generator drive for electric power supply, pumping on oil or gas lines, municipal water pumping, and other stationary power services.

### Jolly Elected President of ASA for Third Term

**T**HOMAS D. JOLLY, vice president of the Aluminum Company of America, has been elected president of the American Standards' Association. It will be his third one-year term as president.

Reelection is also announced of Harold S. Osborne, chief engineer of the American Telephone and Telegraph Company, as vice president of the association. Walter C. Wagner, Philadelphia Electric Company, Philadelphia, has been reelected chairman of the standards council of ASA, and J. R. Townsend, materials engineer with the Bell Telephone Laboratories, Inc., as vice chairman.

### G-E Booklet Covers Small Appliances and Displays

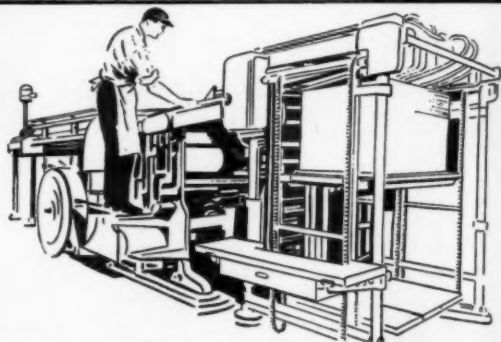
**A** TWENTY-EIGHT PAGE fact book covering General Electric small appliances and displays has been published by the company.

The pocket-size booklet serves as a handy reference for new or experienced sales people in getting a quick resumé of major product and sales features. All of the small appliances, including vacuum cleaners, are illustrated and described, and there is also a complete description of display tools available.

The current edition of the fact book is the fourth published by the company. It is available through distributors at 5 cents a copy.

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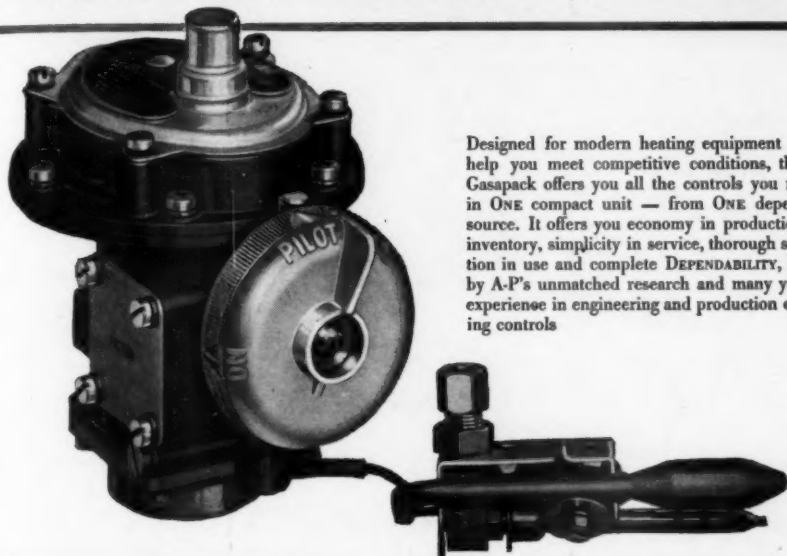
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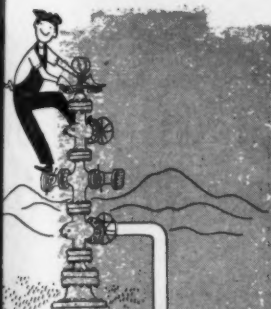
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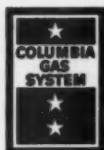
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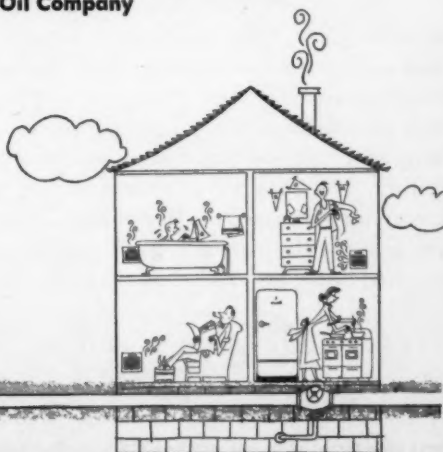


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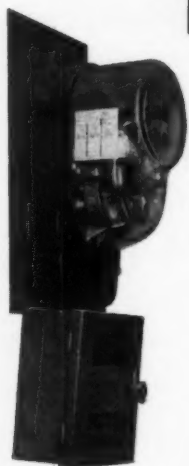
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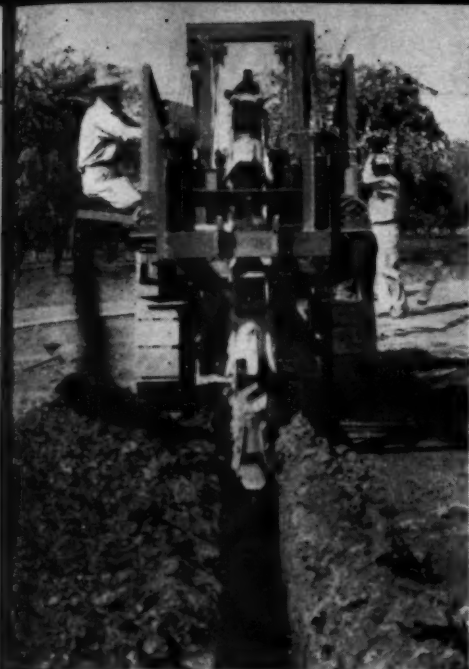
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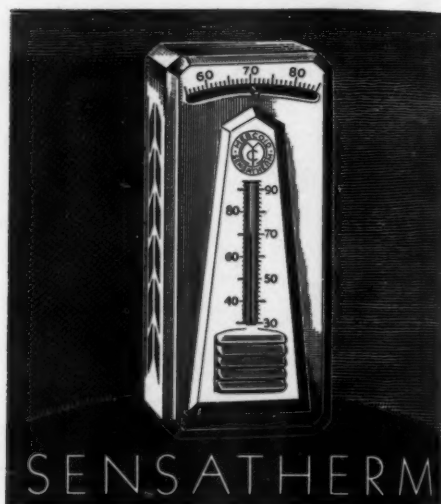


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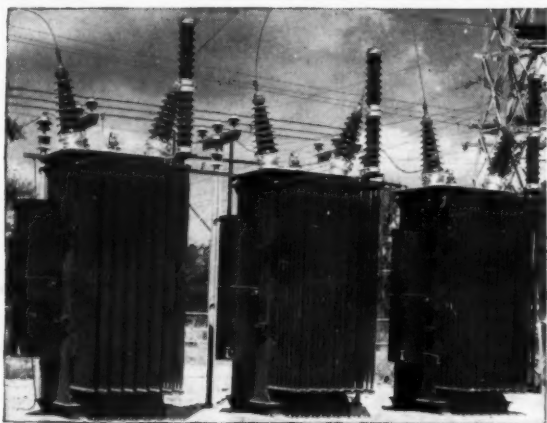
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